

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JUSTIN NOVICK, ET AL § CASE NO. 4:16-CV-0730
 § HOUSTON, TEXAS
VERSUS § WEDNESDAY,
 § JUNE 27, 2018
SHIPCOM WIRELESS, INC., ET AL § 8:04 A.M. TO 5:35 P.M.

JURY TRIAL DAY TWO

BEFORE THE HONORABLE CHRISTINA A. BRYAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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(Pre-admitted.)				

1 HOUSTON, TEXAS; WEDNESDAY, JUNE 27, 2018, 8:04 A.M.

2 (Outside the presence of the jury.)

3 THE COURT: Is there anything that we need to take
4 up before the jury comes in?

5 MR. NOTESTINE: Why not, Your Honor?

6 THE COURT: Okay. With respect to the charge
7 conference, will you-all be ready to do that this evening
8 after Court?

9 MR. NOTESTINE: Yes, Your Honor.

10 MR. SLOBIN: Yes, Your Honor.

11 COURTROOM MARSHAL: They're here.

12 THE COURT: Okay. The jury is all here.

13 MR. SLOBIN: Your Honor, should I put the witness in
14 the box now?

15 THE COURT: Sure.

16 (Pause in the proceedings.)

17 MR. SLOBIN: Your Honor, I think I'd like it on the
18 Record that I was the second person here among the attorneys
19 and the witnesses today.

20 THE COURT: The question is: Did everyone have
21 their coffee this morning?

22 MR. SLOBIN: Yes, but I think I needed a second cup.
23 You'll see a little lag in energy this morning, and I
24 apologize for that in advance. Luke beat me.

25 MR. MACDOWALL: Without any coffee, I should add.

1 MR. SLOBIN: What?

2 MR. MACDOWALL: Yeah.

3 MR. SLOBIN: Do you have kids yet?

4 MR. MACDOWALL: No.

5 MR. SLOBIN: That'll change. I started drinking
6 coffee the week my second child was born.

7 You comfortable with that mic setup today?

8 WITNESS BETHAS: As long as you are.

9 THE COURT: Can you-all hear him back there?

10 MR. SLOBIN: I was having trouble hearing in the
11 beginning, Your Honor.

12 THE COURT: I don't know if you can make it come
13 forward a little bit or --

14 WITNESS BETHAS: That's about as far as we can go.
15 (Talking off the Record.)

16 WITNESS BETHAS: How we doing now?

17 THE COURT: That's better. I think I can pick up
18 now.

19 (Talking off the Record.)

20 THE COURT: We're ready.

21 COURTROOM MARSHAL: You're ready?

22 THE COURT: Yes, thank you so much.

23 COURTROOM MARSHAL: All rise for the jury.

24 (Jury enters courtroom at 8:09 a.m.)

25 THE COURT: Be seated, please.

1 Good morning, ladies and gentlemen of the jury. We
2 are ready to proceed.

3 We need to swear the witness again.

4 (Witness sworn.)

5 THE COURT: Please proceed.

6 DIRECT EXAMINATION OF CHARLES BETHAS

7 BY MR. SLOBIN:

8 Q Good morning, Mr. Bethas. How are you doing today?

9 A I'm great, thank you.

10 Q Great. Okay. Let's just dive right into this.

11 If you'll turn to Exhibit No. 9 in that Plaintiffs'
12 exhibit book in front of you.

13 (Talking off the Record.)

14 BY MR. SLOBIN:

15 Q Or if you can see it on the monitor in front of you, too.
16 That work?

17 A That's fine.

18 Q What is this document?

19 A This appears to be possibly the agreement that --

20 Q I'm going to help you out because I'm going to --

21 A Yes. It's the offer they made me prior to my employment
22 at Shipcom.

23 Q Okay. Great. And you'll kind of some duties and
24 responsibilities that are listed in this document. See that?

25 A Yes, I do.

1 Q Thank you. All right. It indicates that your position
2 will be a senior trainer. Was that your title while you were
3 employed at Shipcom?

4 A It was.

5 Q Okay. And do you know if there's any difference between
6 a senior trainer and any other trainer?

7 A Well, I was the oldest one there. That might have had
8 something to do with it. But actually I have more years of
9 experience at previous positions being a trainer.

10 Q Okay. Let me ask you this. But do you know if the
11 duties that you had as a trainer were the same as other
12 trainers?

13 A They were.

14 Q Okay. Do you know if there's any differences between
15 your duties and other duties of other trainers, based on your
16 own personal experience?

17 A No, we actually were able to do the same things and
18 interchange personnel as needed, which happened quite often.

19 Q Okay. If you'll look down to -- let me point this to
20 you. It says duties shall be as follows but not limited to.
21 It states preparation of training material. What does that
22 mean to you?

23 A The preparation was involved either getting the handouts,
24 the quick reference guides, all the reference materials
25 printed here in Houston. And then drop-ship to the end site.

1 Eventually we changed over to taking them on a thumb drive,
2 presenting them to a local printer and having them print there
3 onsite to help save shipping costs. The PowerPoints, those
4 were also delivered to me by email. I would copy those to a
5 thumb drive so that I would have those when I arrived on site
6 and we'd have the latest versions that were approved.

7 Q Okay. Did you at all -- were you at all involved in
8 actually drafting the training material, the content of those
9 materials?

10 A No, that was done for us. And those were approved
11 between management of Shipcom and the VA. And I believe that
12 there was a furious transition back and forth until those were
13 perfected. Once that happened, then the final drafts were
14 presented to me so that I could transport those to the site.

15 Q Okay. And again, and I apologize if I asked this
16 yesterday. Again, you were not involved in any of that
17 process of what's going to go in the training material and
18 then out to the VA personnel?

19 A No. No, I wasn't.

20 Q Okay. And it has your compensation listed on this; is
21 that right?

22 A That's correct.

23 Q And how were you to be compensated?

24 A Well, I discovered after I was employed there that we
25 were paid monthly. So, the \$90,000 was divided into 12

1 monthly compensations with the appropriate tax and so forth
2 taken out.

3 Q Okay. And was that \$90,000 for all hours, even for all
4 the hours you worked regardless of the amount?

5 A Yes.

6 Q Okay. All right. And did you work a lot of hours?

7 A I slept very little.

8 Q Okay.

9 A Most days were a minimum of 14-hour days.

10 Q Okay. And during those 14-hour days, again tell me
11 exactly what you were doing. Just kind of give me a summary
12 of that.

13 A We would arrive very early onsite to meet with logistics
14 people there onsite. Mostly with the site lead getting us
15 into the rooms. Just getting access into the rooms was
16 sometimes a challenge. Finding a room sometimes we needed to
17 be guided to that. We would set up for the classes and make
18 sure all the visuals were in place, all the materials were
19 passed out, and that we were ready for the class to begin.

20 Q And then you would -- I assume you'd teach the class?

21 A We would teach the class in whatever fashion needed to be
22 -- to accommodate the staffing. And then there would be
23 questions afterwards, occasionally. We would go ahead and do
24 end-of-day reports for the rosters to our management. Answer
25 emails. Plan for the next training, if there was any

1 materials that needed to be reprinted because they had been
2 revised during our training session. And we did that often.
3 So things changed moment to moment and we had to be ready.

4 Q And then if there were questions and you provided
5 responses, where is the source material for you to give the
6 response?

7 A Those were generally parking lot items.

8 Q And what does that mean?

9 A Well, what that means is like during the presentation if
10 it deviates outside what we're addressing through the
11 PowerPoint presentations, we would make a list of whatever
12 questions needed to be answered because we weren't really in a
13 position to be able to say how they worked, how their process
14 flowed. And most of the time that was our first time onsite.
15 So we would parking lot those items and pass those up to my
16 managers so that they could disseminate them to theirs and a
17 decision and answer could be given. And most often those
18 answers would be reported back to us, as well.

19 Q Okay. All right. But did you have the ability to answer
20 questions that were outside of the materials given to you by
21 Shipcom?

22 A No. Any questions were generally We do this here, what's
23 the equivalent of that with your software.

24 Q All right. I'm going to put up Plaintiffs' Exhibit
25 No. 10. You see this?

1 A Yes.

2 Q And what is this?

3 A Well, it looks like a job description for a trainer.

4 Q Okay. And I'll let the jury kind of go through all this.
5 But it says here, and I think this is important, enhancing
6 training materials. What does that mean to you?

7 A I really can't tell you. Enhancing it. The training
8 materials were presented to us. We weren't to deviate.
9 Possibly printing them in color versus black and white.

10 Q Okay. But you didn't alter?

11 A No, we weren't allowed to alter content.

12 Q All right. Great. All right. Here comes a laundry list
13 of questions. I need to go through all of these. It's
14 important to your case.

15 A Okay.

16 Q All right. Did you do any work related to tax?

17 A No.

18 Q Okay. And I think I'm going to use Mr. Sinkule's
19 approach. Did you do any work related to finance, accounting
20 or budgeting?

21 A No, I didn't.

22 Q Okay. Did you do any work related to auditing?

23 A No.

24 Q Did you do any work related to insurance, quality control
25 or purchasing?

1 A No, they had departments for that and there was no need.

2 Q I asked you this earlier, but did you do any work
3 relating to procurement?

4 A No.

5 Q All right. Did you do any work relating to advertising,
6 marketing, research or anything related to safety and health?

7 A No.

8 Q All right. Did you do any work related to personnel
9 management or human resources?

10 A No, I didn't.

11 Q What about employee benefits, labor relations or public
12 relations?

13 A No.

14 Q What about government relations or computer network?

15 A No, that was outside my job --

16 Q Okay. What about any work related to Internet and data
17 base administration?

18 A No.

19 Q Any work related to legal and regulatory compliance?

20 A No.

21 Q Any -- Let me ask you this. Were you engaged in actually
22 running Shipcom?

23 A No, not in any way.

24 Q Okay. You weren't on management at Shipcom, were you?

25 A No.

1 Q All right. Were you at all responsible for determining
2 Shipcom's overall course or policies?

3 A No, I was not.

4 Q Did you design any of the CATAMARAN software?

5 A No. No.

6 Q Were you a part of the team that designed any of the
7 CATAMARAN software?

8 A No, that was done by Development.

9 Q Okay. And again, I believe you testified your job was
10 literally just training that material; is that right?

11 A Yes. I presented the material.

12 Q Okay. Did you advise the VA hospitals on about how to
13 configure or modify the CATAMARAN software to run their
14 business?

15 A No.

16 Q Okay. All right. Did you have the authority to
17 formulate Shipcom's management policies?

18 A No, I didn't.

19 Q Did you have the authority to effect Shipcom's management
20 policies?

21 A No, I didn't.

22 Q Did you have the authority to interpret Shipcom's
23 management policies?

24 A No, sir.

25 Q What about implement Shipcom's management policies?

1 A Absolutely not.

2 Q What about formulating their operating procedures?

3 A No. Those were dictated to us. No.

4 Q Affecting their operating procedures?

5 A No, those were parked or in place.

6 Q Okay. Interpreting their operating procedures?

7 A No.

8 Q Implementing their operating procedures?

9 A No.

10 Q Were you able to commit Shipcom in matters that have a
11 significant financial impact?

12 A No. I was just a teacher and presenter.

13 Q All right. Still got a couple more here. Sorry.

14 A Okay.

15 Q Did you have authority to waive or deviate from
16 established policies and procedures without prior approval?

17 A Absolutely not.

18 Q And can you get a little closer to that mic again?

19 A Absolutely not.

20 Q Did you have authority to negotiate and bind Shipcom on
21 matters of significant -- on significant matters?

22 A No.

23 Q Did you provide consultation or expert advice to Shipcom
24 management?

25 A No.

1 Q Were you involved in planning long- or short-term
2 business objectives for Shipcom?

3 A No. Those were decided for us.

4 Q Did you investigate and resolve matters of significance
5 on behalf of Shipcom's management?

6 A No.

7 Q All right. Did you represent the company in handling
8 employment complaints?

9 A No.

10 Q Or any complaints?

11 A No.

12 Q Did you represent the company in arbitrating disputes?

13 A No, not amongst the employees or the VA, either one.

14 Q Okay. Did you represent the company in resolving
15 grievances?

16 A No.

17 Q Did you ever negotiate a contract with the VA?

18 A No, I didn't.

19 Q Did you negotiate any pricing terms with the VA?

20 A No.

21 Q Did you participate in any management meetings at Shipcom
22 regarding the direction of the company?

23 A No, I didn't.

24 Q Did you have any input into which hospitals you trained
25 at?

1 A No, I didn't.

2 Q Did you discipline employees?

3 A Absolutely not.

4 Q Did you manage employees?

5 A No.

6 Q Did you devise any marketing plans for Shipcom?

7 A No.

8 Q Did you decide whether or how to recruit potential hires?

9 A No.

10 Q So you indicated that you were primarily teaching. How
11 much time, how much of your job was teaching?

12 A Basically the entire time I was onsite.

13 Q Okay. And was that your primary duty?

14 A That was really my only duty, yes.

15 Q Okay. Let's look at Plaintiffs' Exhibit No. 11. And you
16 may want to pull this out of the book or look at it in the
17 book. Let me ask you -- I'm not going to go through all of
18 these, but I want to go through a couple of them.

19 Whose handwriting is this?

20 A The handwriting would be mine.

21 Q Okay. And what is this document that we're looking at?

22 A It's an annual performance review for myself.

23 Q Says year one, so that's the first year you were there?

24 A It was sometime after my anniversary, approximately three
25 months, but yes.

1 Q Okay. All right. Let's talk about number 5. I can't
2 read your handwriting. What does that -- First of all, what's
3 the question and what's your response?

4 A The question reads, number 5, proficiency at improving
5 work methods and procedures as a means towards greater
6 efficiency. My handwriting shows two items, one being
7 developed and accomplished data interface virtual training.

8 Q Okay. And that's consistent with what you did; is that
9 right?

10 A Yes. The development staff had a playground, a sandbox,
11 a test environment where I could practice setting up rooms,
12 setting up racks, basically just getting to know the software
13 and be able to talk to it in an intelligent way.

14 Q Okay. And again, you're following the processes that are
15 given to you; is that right? Is that fair?

16 A Yes, I needed to know how to do this. Yes. And was
17 instructed to learn the software.

18 Q Okay. Why don't you turn to the next page. Let's talk
19 about number 7, the ability to work independently. What did
20 you write?

21 A I wrote that the DC site go-live support solo for
22 approximately eight weeks. Basically that means that everyone
23 in the company left except for me. I was there by myself.

24 Q Okay. And again, this whole time you're following the
25 guidelines from Shipcom; is that right?

1 A That's correct.

2 Q What about number 11? Move that out. What is that
3 question and response?

4 A Adeptness to analyzing facts, problem solving, decision-
5 making, and demonstrating good judgment, has determined site
6 lead -- has demonstrated site lead skills and worked as public
7 relations during crisis management. And I notated DC and
8 Durham.

9 Q Okay. What happened there?

10 A Chaos. There was poor execution and poor assessment of
11 the site's needs. There were difficulty in the learning curve
12 in the staffing at both sites. So I was asked to stay behind
13 and basically handle these people through additional training,
14 day in, day out until they got it.

15 Q Okay. And do you know why you were asked to kind of
16 hand-hold at the site?

17 A Because I'm empathetic and nice.

18 Q Okay. Patient?

19 A Very.

20 Q Okay. And again, the whole time while you're hanging
21 back dealing with that crisis situation are you still
22 following Shipcom's management or guidelines?

23 A Every day.

24 MR. MACDOWALL: Objection, Your Honor. Please ask
25 Counsel not to lead the witness -- stick to questions. Object

1 to form.

2 THE COURT: Your objection is leading?

3 MR. MACDOWALL: Yes, Your Honor.

4 THE COURT: Sustained.

5 MR. SLOBIN: All right. I'll move on.

6 BY MR. SLOBIN:

7 Q Let's look at number 15. Tell me what this question --
8 please explain what 15 states.

9 A Fifteen states "delegates responsibility where
10 appropriate based on the employee's ability and potential."

11 Q Can you read your response?

12 A I'll do my best. "Operates within company hierarchy for
13 issues, resolutions" -- I'm not sure what the next word says.

14 Q Looks like help desk.

15 A Help desk. Thank you. "Expense department, travel" --
16 and I'm not sure what the next word is. I apologize.

17 Q Okay. Were you dedicating response -- I'm sorry --
18 delegating responsibilities?

19 A No, I was reporting within the ranks in the
20 organizational chart of the company.

21 Q Okay. All right. Then let's look at the top on the next
22 page. I think I'm going to get you to read number one out to
23 everybody.

24 A Okay. Number 1, "list all aspects of employee's
25 performance that contribute to his or her effectiveness."

1 "Has developed to continually improve upbeat attitude." And I
2 can't quite read, if you could scoot that over.

3 Q Sorry.

4 A "In and under diverse conditions -- adverse conditions,
5 has great ability to be able to work with any site or Shipcom
6 employee, willingness to travel or change work locations."

7 Q Okay. And do you agree with that?

8 A Yes.

9 (Pause in the proceedings.)

10 Q Show you Plaintiffs' Exhibit No. 13. Have you seen this
11 before?

12 A Yes, I have.

13 Q Okay. When did you first see this?

14 A Would have been sometime after July. I'm going to say it
15 was in possibly in August of 2015.

16 Q Okay. And what was your understanding of this document?

17 A Well, my understanding was that they would accumulate or
18 ascertain what my overtime hours were from Deltec (phonetic)
19 and pay me some rate that they determined was considered
20 overtime. Which that process began in September, the 1st of
21 September of 2015. But I'm not really sure whatever happened
22 to August.

23 Q Okay. And what do you mean by that?

24 A Well, they paid us through July 31st of 2015, and they
25 picked up paying us with overtime in September.

1 Q Okay. Did you work overtime in August?

2 MR. MACDOWALL: Objection, Your Honor. This entire
3 line of questioning is irrelevant. There's no issue of
4 damages before the jury, so I'm not sure where counsel is
5 going with this, but it's certainly not something for the jury
6 to consider.

7 MR. SLOBIN: Your Honor, Mr. Notestine opened the
8 door yesterday on damages. I'm not going any further than
9 that question.

10 THE COURT: All right. Let's wrap it up quickly.

11 Overruled. The objection is overruled.

12 BY MR. SLOBIN:

13 Q Okay. And so, how did things change though regarding
14 your compensation after September of 2015?

15 A In regards to our working conditions they changed
16 greatly. We went from working well into the night to being
17 required to clock out at a specific time every day so that we
18 would not incur overtime.

19 Q Okay. Great. Just a few more questions. And again, I
20 apologize if I asked this before. But did you have any
21 involvement in improving Shipcom's training materials?

22 MR. MACDOWALL: Objection, Your Honor, asked and
23 answered.

24 THE COURT: Overruled.

25 BY MR. SLOBIN:

1 Q So you can answer.

2 A We absolutely could not.

3 Q Okay. Did you ever offer up any suggestions to improve
4 Shipcom's materials or training process?

5 A Initially, in my first few months at Shipcom, but then I
6 realized it was futile.

7 Q Okay. And what do you mean by that? Did they do
8 anything in response to your --

9 A It just went into space. Any suggestions I made were
10 ignored and not responded to.

11 Q Okay. Who knew what you were doing the most? Who knew
12 your duties the most?

13 MR. MACDOWALL: Objection, Your Honor. Calls for
14 speculation.

15 THE COURT: Sustained.

16 WITNESS BETHAS: Well, that would be my --

17 MR. SLOBIN: You got to stop.

18 WITNESS BETHAS: I'm sorry.

19 BY MR. SLOBIN:

20 Q I'll ask a better question or another question.

21 Was anyone with you on a day-to-day basis when you
22 were doing training?

23 A Generally there would be one other trainer. Not always,
24 but I'd say at least half the time.

25 Q Okay. Was Mr. Goenka ever with you when you were doing

1 training?

2 A No.

3 Q Okay. There's also another individual, I cannot
4 pronounce his last name, Reddy.

5 A Reddy was never in one of my classes. I did see him
6 onsite at about four different sites just visiting, but that
7 was it.

8 Q Were you ever offered stock options?

9 A No.

10 Q Did you ever receive an employment handbook or a manual?

11 A If I recall correctly, I was out onsite on the East
12 Coast. I believe that there was a communicate that we were
13 supposed to respond back to that there was one published. So
14 there was one that existed, possibly even a year into my
15 employment.

16 Q All right. Do you recall at all when you received that
17 communicate regarding the employment handbook?

18 A I can't specifically tell you what date that was.

19 Q Will you turn in that big binder to Exhibit No. 68?
20 Yeah, this one. This one right here. Do you see that?

21 A I do.

22 Q Is that the handbook you were referencing?

23 A I believe it is.

24 Q Okay. Do you recall approximately when you received
25 this?

1 A I don't. It was long after I'd started and I was out
2 onsite.

3 Q If we look at -- I think it's the third page, the top,
4 there are some dates here. You see those?

5 A Yes.

6 Q Does this refresh your recollection as to when you may
7 have received this handbook?

8 A This parallels my recollection. I had been with Shipcom
9 just over a year then.

10 Q Okay. And so, you think you received it when?

11 A The summer or early Fall of 2015.

12 Q Okay.

13 MR. SLOBIN: Your Honor, I'll pass the witness.

14 THE COURT: All right. Mr. MacDowall.

15 MR. MACDOWALL: Your Honor, before I begin my cross
16 may I set up our laptop to work with the overhead projector?

17 THE COURT: Yes.

18 MR. SLOBIN: Oh. Your Honor, I forgot a host of
19 questions. I apologize. Can I continue on? I don't think
20 I've ever done that.

21 Do you have any objection?

22 I can do it on the back end. I'm sorry, Your Honor.

23 MR. MACDOWALL: No, Your Honor, I understand. I
24 think it's better this way.

25 THE COURT: All right. So finish.

1 Can you -- are you able to set up while he's
2 finishing his questioning?

3 MR. MACDOWALL: I think I can, yes, Your Honor.

4 THE COURT: All right.

5 MR. SLOBIN: I don't think I've ever done that, Your
6 Honor.

7 DIRECT EXAMINATION OF CHARLES BETHAS (RESUMED)

8 BY MR. SLOBIN:

9 Q Charles, will you turn to Exhibit No. 65 in that book?
10 (Pause in the proceedings.)

11 Q Are you there?

12 A Yes, I am.

13 Q All right. What is -- do you know what this document is?

14 A Well, it looks like it's a printout of my LinkedIn
15 profile.

16 Q Okay. And there's a date up here on the top, December
17 2015 -- I'm sorry, December 15, 2017. Does that accurately
18 reflect this document at that time?

19 A That's correct.

20 Q Okay. Or is that -- or do you know if that's the print
21 date?

22 A I'm pretty sure it was -- that was in effect and it
23 probably still is. I haven't updated my LinkedIn page for a
24 long time.

25 Q Well, if you look down here it says Shipcom; you see

1 that?

2 A Yes.

3 Q All right. Please read me what you wrote there. And I
4 assume you wrote this?

5 A Yes. Uh -- hmm. It says on July 2014 I will be working
6 to implement a new automated inventory system for the VA
7 hospitals nationwide. So it appears to be a post prior to my
8 employment with Shipcom, possibly when I was interviewing with
9 them.

10 Q Okay. So you hadn't started working?

11 A No.

12 Q Okay. All right. Let's look at just one more document.
13 Turn to Plaintiffs' Exhibit No. 16.

14 (Pause in the proceedings.)

15 Q Are you there?

16 A I am.

17 Q What is this?

18 A It appears to be a resume, possibly a resume since my
19 employment with my current employer now.

20 Q Okay. And then you've got some information listed about
21 Shipcom; is that fair?

22 A Yes.

23 Q Okay. And did you prepare this document?

24 A Yes, I did.

25 Q It states here under your senior trainer and

1 implementation project manager, was that your title?

2 A Senior trainer was.

3 Q What about implementation project manager?

4 A That actually was responsibilities from previous jobs
5 that I brought forward.

6 Q Okay. Why did you do that?

7 A Well, we were suddenly let go. I was out of work for
8 approximately half a year. I needed a job to save my
9 lifestyle.

10 Q So is this accurate?

11 A From a sales standpoint, yes.

12 Q It's a stretch though?

13 A Yes.

14 MR. MACDOWALL: Objection, Your Honor, leading.

15 MR. SLOBIN: Okay.

16 THE COURT: Sustained.

17 BY MR. SLOBIN:

18 Q It states under here "managed implementation and training
19 of logistical inventory, hardware and software systems in 200
20 Veteran Administration medical centers facilities." Is that
21 accurate?

22 A No, it's not. We weren't ever able to get out to 200
23 Veteran sites, but that was our objective to begin with. And
24 my sole responsibility was training. I wasn't able to
25 exercise to manage implementation of training.

1 Q Okay. And again, is this --

2 A Hardware.

3 Q Is this an accurate description of your duties?

4 A Not for what I ended up doing, no.

5 Q All right. And again, why did you write that?

6 A I wanted to be able to present --

7 Q I get it.

8 A I wanted to be able to present all of my skill sets being
9 represented in all my positions.

10 Q Is that what you did at Shipcom?

11 A No.

12 Q The next paragraph it states you're a key role player
13 between VISN management and company VPs. What's VISN
14 management?

15 A VISN management would be the legacy system that the VA
16 used to accomplish their logistics in purchasing. Company
17 VIPs would be Shipcom management. And so, this basically says
18 that I communicated with both, often was a relay for
19 information between the VA and our management.

20 Q Okay. And is that a accurate statement?

21 A Yes.

22 Q Okay. And then it states further down in that paragraph
23 project manager. You write that?

24 A Yes, I did.

25 Q Were you a project manager?

1 A I was a project manager from my education previously to
2 Shipcom. However, I was not able to my PMO skills there.

3 Q This is really important though. Were you a project
4 manager for Shipcom?

5 A No.

6 Q Did you manage employees at Shipcom?

7 A No, I had no input as to the scope, to the milestones or
8 to the key role players that a project manager would do.

9 Q Did you supervise anyone at Shipcom?

10 A No, I did not.

11 Q Did you hire anyone at Shipcom?

12 A No.

13 Q Did you fire anyone at Shipcom?

14 A No.

15 Q All right. So this isn't accurate?

16 A No.

17 MR. SLOBIN: Your Honor, I'll pass the witness now
18 officially.

19 THE COURT: All right.

20 Mr. MACDOWALL, when you're ready.

21 MR. MACDOWALL: Your Honor, thank you.

22 CROSS-EXAMINATION OF CHARLES BETHAS

23 BY MR. MACDOWALL:

24 Q Good morning, Mr. Bethas.

25 A Good morning.

1 Q You attended Wichita State University; is that right?

2 A I did.

3 Q And you graduated there with a bachelor of science degree
4 in business administration; is that accurate?

5 A Yes, sir.

6 Q Am I right that following your college graduation you
7 began working for a company called Professional Data Services;
8 is that right?

9 A After I graduated from college I was employed by Farmarco
10 (phonetic).

11 Q And after that you were employed by Professional Data
12 Services; is that accurate?

13 A That's correct.

14 Q You began working there in 1983; is that true?

15 A Yes.

16 Q And Professional Data Services is a medical software
17 company, is it not?

18 A It is for practice management.

19 Q And you worked for that company as a trainer; is that
20 right?

21 A Correct.

22 Q And you would agree with me that your job entailed
23 loading software on a mainframe and training personnel how to
24 use that software; is that right?

25 A That's correct.

1 Q And you worked for that company for 14 years through
2 1997; is that accurate?

3 A Yes.

4 Q And the entire time you held that same job for
5 Professional Data Services; is that true?

6 A Yes.

7 Q Performing those same duties all 14 years; is that
8 accurate?

9 A Yes.

10 Q And then in 1998 you went to work for a company called
11 Harris Enterprises; is that true?

12 A That's correct.

13 Q And Harris Enterprises was a publication company; is that
14 right?

15 A That's true.

16 Q You worked for Harris Enterprises as a software analyst;
17 do I have that right?

18 A Correct.

19 Q Am I correct that your job as a software analyst was to
20 test and implement changes to software which were provided by
21 the company's software vendors?

22 A Yes.

23 Q And is it accurate that you worked for Harris Enterprises
24 through 2005?

25 A Yes.

1 Q So approximately eight years there? Seven years. Excuse
2 me.

3 A Yes.

4 Q And then you went back to work for Professional Data
5 Services in 2005; is that right?

6 A I did.

7 Q And that was the company we just got finished talking
8 about that you were with from 1983 to 1997, true?

9 A Correct.

10 Q And your job title this time around was business/clinical
11 analyst; is that correct?

12 A Correct.

13 Q And your job as a business/clinical analyst was to
14 implement software on electronic medical records; is that
15 right?

16 A Actually it was training clinicians, doctors, nurses how
17 to use electronic medical records software.

18 Q Okay. So your job in that regard was training people how
19 to use medical-related software; is that right?

20 A That's correct.

21 Q And you would do hands-on training with some of these
22 folks; is that right?

23 A Correct.

24 Q In fact you would do hands-on training in a sort of test
25 setting before the software was actually live with the client;

1 is that accurate?

2 A Correct.

3 Q And you were doing that in a setting before the client
4 was migrating over to a live version of the software; is that
5 accurate?

6 A We started out that way, yes.

7 Q And in this role you trained administrative personnel,
8 right?

9 A Yes.

10 Q And you trained clinical personnel; is that accurate?

11 A Yes.

12 Q And you worked in this position until August of 2013. Do
13 I have that right?

14 A Correct.

15 Q You then went to work as a project manager for a global
16 medical supply company; is that accurate?

17 A Yes.

18 Q And I believe you alluded to that earlier. That's
19 something that you put in your resume, that project management
20 experience that you have.

21 A Yes.

22 Q And at the time this company was busy building oncology
23 hospitals; is that accurate?

24 A That's correct.

25 Q And your job in this project management role was to

1 arrange all the necessary logistics for building those
2 oncology hospitals; isn't that right?

3 A Correct.

4 Q You then applied for employment with Shipcom; is that
5 true?

6 A Yes.

7 Q And Shipcom made you an offer of employment, right?

8 A Correct.

9 MR. MACDOWALL: Apologize, Your Honor. Just a few
10 seconds if I may.

11 (Pause in the proceedings)

12 BY MR. MACDOWALL:

13 Q Mr. Bethas, this is a copy of the document you saw
14 earlier on direct examination, right?

15 A Yes.

16 Q This is a copy of your offer letter from Shipcom --

17 A Yes.

18 Q -- dated July 25th of 2014; is that accurate?

19 A Yes.

20 Q And in this document at the bottom there of that part
21 that I've highlighted or pulled out there it says your
22 position will be senior trainer with effect from August 7th of
23 2014; is that right?

24 A Yes.

25 Q And you testified on direct examination that you accepted

1 this offer of employment from Shipcom; is that true?

2 A That's correct.

3 Q And you were actually as a senior trainer throughout your
4 employment with Shipcom; is that accurate?

5 A That's correct.

6 THE COURT: Counsel, that was which exhibit? Is
7 that DX?

8 MR. MACDOWALL: Apologize, Your Honor. It's
9 Defendant's Exhibit No. 15.

10 THE COURT: Thank you.

11 BY MR. MACDOWALL:

12 Q I'm pulling out another section of this for you to see a
13 little bit better, Mr. Bethas. It's paragraph number 2. Do
14 you see that, compensation?

15 A I do.

16 Q And this indicates that you would be compensated by the
17 company at the rate of \$90,000 annually; is that right?

18 A That's correct.

19 Q And you were in fact compensated by the company with an
20 annual salary of \$90,000; is that true?

21 A True.

22 Q Now before receiving the offer from Shipcom you had
23 assumed that you would be paid on a salary basis by the
24 company; isn't that true?

25 A Yes.

1 Q And you assumed that because you had been paid on a
2 salary basis in all the other jobs that --

3 MR. SLOBIN: Objection, relevance, Your Honor. I'm
4 sorry, I didn't mean to --

5 THE COURT: Overruled.

6 BY MR. MACDOWALL:

7 Q Mr. Bethas, you assumed that you were going to be paid on
8 a salary basis by Shipcom because in all of the other jobs
9 that we've talked about today you were paid on a salary basis,
10 too; isn't that right?

11 MR. SLOBIN: Objection again, Your Honor. May I
12 approach?

13 THE COURT: Yes.

14 (Bench conference begins at 8:54 a.m.)

15 (Bench conference indiscernible.)

16 (Bench conference ends at 8:55 a.m.)

17 BY MR. MACDOWALL:

18 Q Mr. Bethas, I'm going to ask the question again just to
19 be clear. You assumed when you received the offer from
20 Shipcom that you would be paid on a salary basis for that
21 company because you had been paid on a salary basis with all
22 the other employers that we've talked about today; isn't that
23 true?

24 A No. I was paid salary plus commission and bonuses at
25 other positions. My understanding was exactly what this

1 states.

2 Q But you were paid on a salary basis with all those other
3 companies; isn't that right?

4 A There was salary involved, yes.

5 Q So you weren't surprised when Shipcom offered you a
6 salary, an annual salary as your compensation; isn't that
7 right?

8 A I was not shocked, no.

9 Q Isn't it also true that in none of those other jobs you
10 had never been paid overtime? Isn't that true?

11 A I was paid bonuses for going over and above, so consider
12 that overtime or not.

13 Q Well, you weren't paid for working an extra number of
14 hours; is that right?

15 A That's correct.

16 Q Now, we've heard testimony that you were reclassified as
17 non-exempt by Shipcom in 2015; is that right?

18 A That's correct.

19 Q And you were paid back pay for amount of overtime hours
20 that you had worked for the company up until the point of
21 reclassification; isn't that true?

22 A True.

23 Q And that sum that you were paid was \$7,384.09; is that
24 accurate?

25 A That's correct.

1 Q You were then paid overtime by Shipcom through the rest
2 of your employment; isn't that true?

3 A That's true.

4 Q And you never made any complaint to Shipcom about being
5 classified as an exempt employee; isn't that right?

6 A Actually I was irritated that it wasn't done up front.
7 So, yes, I complained to my manager.

8 Q When did you complain to your manager?

9 A Constantly after this was implied and before it was
10 introduced.

11 Q Do you recall giving a deposition in this case,
12 Mr. Bethas?

13 A Yes.

14 Q And that deposition took place at your attorney's office;
15 isn't that true?

16 A Yes.

17 Q And your attorney was there, wasn't he?

18 A Yes, he was.

19 Q And I was there and I asked you certain questions, didn't
20 I?

21 A Yes.

22 Q And there was a court reporter taking down what you said;
23 isn't that true?

24 A Correct.

25 Q And you were sworn in to tell the truth at that

1 deposition, weren't you?

2 A Yes.

3 MR. MACDOWALL: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes.

6 BY MR. MACDOWALL:

7 Q Mr. Bethas, I'm handing you what is a sealed copy of your
8 transcript we received from the court reporter. If you would,
9 please open that. Do you see that, Mr. Bethas?

10 A Yes.

11 Q If you could, turn to page 165. If you'd look at line
12 number 9, I'm going to read aloud and you read along with me
13 silently.

14 It says Question: "Before you were reclassified I
15 believe you testified you didn't have any complaints about
16 being classified as an exempt employee; is that accurate?"
17 Answer: "It was how the job was presented and I accepted
18 that." Question: "So all of your complaints are with respect
19 to the company's decision to reclassify you?" Answer: "And
20 how that was done."

21 Did I read that accurately?

22 A Yes.

23 Q So wouldn't you agree with me that you didn't have
24 complaints about being classified as an exempt employee during
25 your employment?

1 A Just how that was done.

2 Q Just how the reclassification was done; is that accurate?

3 A That's correct.

4 Q Now you worked as a senior trainer up until July 27th of
5 2016; is that accurate?

6 A Yes, sir.

7 Q You were traveling to different VA hospitals to perform
8 work on behalf of Shipcom for the VA hospitals; is that true?

9 A Yes.

10 Q And as part of your work you were implementing a software
11 system called CATAMARAN. I believe you testified to that; is
12 that right?

13 A I was training that system, yes.

14 Q And you would agree with me that the purpose of CATAMARAN
15 was to monitor the hospital's use of medical and surgical
16 supplies; is that accurate?

17 A Correct.

18 Q And the supplies are being used for all sorts of purposes
19 such as surgical supplies, long-term health supplies,
20 etcetera, right?

21 A Correct.

22 Q And is it important for the hospitals, would you agree
23 with me, to determine their usage and inventory supplies of
24 these different medical items; isn't that true?

25 A True.

1 Q It's important to the hospitals' running of their
2 business, wasn't it?

3 A Sure.

4 Q And it was important for the hospitals to be able to
5 monitor those supplies because it would help increase their
6 efficiency; wouldn't you agree with that?

7 A Yes.

8 Q And would you agree with me that it was also important
9 for the hospitals -- excuse me, for patient care?

10 A Absolutely.

11 Q Ultimately the goal, right, was to save lives through
12 this new system that was being implemented; isn't that right?

13 A Yes, sir.

14 Q Now aside from the software component, the CATAMARAN that
15 we've been talking about, there were also the hardware
16 components to leverage that software; isn't that true?

17 A (No audible response.)

18 Q They were implementing hardware pieces to leverage the
19 software; is that right?

20 A The system incorporated hardware and software, yes.

21 Q And part of your job as a trainer was to train on those
22 hardware pieces; isn't that true?

23 A There were some hardware pieces, yes, involved that the
24 end users used.

25 Q So, ultimately what you were training on was the software

1 and the hardware solution that Shipcom was implementing in the
2 hospital. Would you agree with that?

3 A Yes.

4 Q And the solution, when we use that term, what we're
5 talking about, if you would agree with me, is the solution to
6 the tracking and monitoring of the inventory supplies, isn't
7 that right?

8 A That's the purpose for it, yes.

9 Q And the purpose was to improve the processes that the VA
10 hospital had in place before hiring Shipcom to do this job;
11 isn't that right?

12 A Yes.

13 Q So you were training these hospital personnel on how to
14 do their jobs more efficiently and better; wouldn't you agree
15 with that?

16 A Yes.

17 Q And I believe you testified earlier that your primary job
18 was to train the hospital staff; isn't that right?

19 A Yes, sir.

20 Q And in training the staff we were talking about training
21 on both the software and hardware components we just talked
22 about, right?

23 A Yes.

24 Q You also train on supply chain concepts; isn't that true?

25 A Yes, that was involved in the material that we presented.

1 Yes.

2 Q And by supply chain concept we're talking about concepts
3 about how to improve processes of moving items from one place
4 to another; isn't that true?

5 A Well, how to do it. Most often it involved an
6 improvement in the process, yes.

7 Q And you were teaching those concepts to the folks you
8 were training; isn't that right?

9 A Yes.

10 UNIDENTIFIED SPEAKER: Can you speak up or get
11 closer to the mic, please?

12 BY MR. MACDOWALL:

13 Q Mr. Bethas, you would also train on the benefits of the
14 solution; isn't that true?

15 A That was incorporated in the materials, yes.

16 Q And one of the reasons that you're teaching on the
17 benefits of the solution is to convince the staff to adopt it;
18 isn't that right?

19 A True.

20 THE COURT: Just one moment. I'm not sure that mic
21 is on. Can you tap it?

22 (Pause in the proceeding.)

23 THE COURT: I tell you what, let's -- Mr. Bethas,
24 when you answer can you speak up? And then on our break we'll
25 see if we can figure out how to get that microphone working.

1 WITNESS BETHAS: Sure, I'll do my best.

2 THE COURT: Ladies and gentlemen of the jury, are
3 you able to hear the witness?

4 (No audible response.)

5 THE COURT: All right. Please let us know if you
6 cannot hear him and we'll try to get that fixed during the
7 break.

8 Sorry, Mr. MacDowall, you may continue.

9 MR. MACDOWALL: Thank you, Your Honor.

10 BY MR. MACDOWALL:

11 Q Mr. Bethas, in order to train the hospital personnel on
12 the solution we've been talking about, you would agree with me
13 that you would have to develop a deep understanding of that
14 solution that was being implemented; isn't that right?

15 A Yes.

16 Q And in order to develop that deep understanding of the
17 solution you would put together test scenarios to figure out
18 how the software worked; isn't that right?

19 A They had a test environment for us to use. It was called
20 Playground, and that's what I used to familiarize myself with
21 the software. Yes.

22 Q To give the jury an idea here, when we're talking about
23 this testing environment it's an environment that you're using
24 that you can access from your computer; is that right?

25 A Correct. Just Shipcom employees.

1 Q And as a Shipcom employee you would get on there and test
2 the software to see if you could, for example, add different
3 events and different supply rooms; is that right?

4 A True.

5 Q And you would test work flows to see how certain items
6 would go from place to place within the hospital; is that
7 right?

8 A Yes.

9 Q And you did that so that you could have an understanding
10 of it to explain it to the people that you were training;
11 isn't that right?

12 A Yes.

13 Q And you would put together these test scenarios sometimes
14 by yourself and sometimes with your team members who were on
15 the training team; isn't that right?

16 A Yes.

17 Q And you would agree with me that the software that was
18 being implemented changed over time; isn't that true?

19 A Constantly.

20 Q And that's because Shipcom had a development team that
21 was working on improving that software; isn't that true?

22 A True.

23 Q When you first started, for example, there was only a
24 couple of modules of the software, like versions of the
25 software; would you agree with that?

1 A Yes.

2 Q And over time more modules got added; isn't that true?

3 A True.

4 Q So you would have to learn how to use all of those
5 modules so you could teach on them; isn't that true?

6 A True.

7 Q One of those modules was the POU module that sort of
8 tracked the inventory and supplies for the hospital; is that
9 accurate?

10 A Yes.

11 Q And there was a different module called the procurement
12 module that was used by the hospitals to procure items by
13 purchasing them; is that right?

14 A It was a purchasing ordering system. That's what it was.

15 Q And it was to get materials for the hospital to use,
16 these surgical supplies, medical supplies, etcetera?

17 A Correct.

18 Q So you'd agree that that procurement module related to
19 the hospital's procurement processes; is that right?

20 A Yes.

21 Q And it was changing the way that procurement happened
22 within the hospitals when they implemented the new system;
23 isn't that true?

24 A As far as work flow, no. By process, yes.

25 Q Now in order to train the hospitals at the site about the

1 differences that Shipcom was doing to these different
2 processes, you would agree with me that you had to first
3 understand what the original processes were at the hospital;
4 isn't that true?

5 A I would have to discover that onsite prior to.

6 Q And you would need to do that in order to explain to the
7 hospital personnel Here's how you do it now and here's how
8 it's going to be different later; isn't that right?

9 A Correct.

10 Q And in order to figure that out you would speak with
11 logistics personnel at the hospital, right?

12 A Yes.

13 Q For example, you'd speak to the supply technicians who
14 were in charge of stocking supply closets and ordering the
15 supplies; is that accurate?

16 A Yes.

17 Q You'd also speak with the clinicians like the nurses and
18 the doctors to figure out how they're interacting with the
19 procurement process in their jobs, right?

20 A The clinicians wouldn't be involved with that, but the
21 purchasing agents would be.

22 Q Okay. And you'd speak to the clinicians about how
23 they're involved with other aspects like monitoring inventory
24 supplies, right?

25 A Correct.

1 Q You'd also speak with management level folks like the
2 chief facility logistics officer at these hospitals; is that
3 true?

4 A Yes, sometimes.

5 Q And sometimes you'd interact with the chief financial
6 officer of a hospital; is that true?

7 A Possibly, yes.

8 Q You say possibly. Did you do that in your job?

9 A Not consistently from site to site, but there were times,
10 yes.

11 Q And I believe you testified yesterday that the solution
12 at each hospital varied because the hospitals' needs were
13 different; is that right?

14 A That's right.

15 Q In fact you said that no hospital was the same; is that
16 right?

17 A That's correct.

18 Q And you worked at approximately 25 different hospitals
19 over the course of your employment with Shipcom; is that true?

20 A That's true.

21 Q And we just got finished talking about a group of people
22 that you talked with, the logistics officers, the clinicians,
23 sometimes chief financial officers. You trained all those
24 folks at one point or another during the course of your
25 employment at these hospitals; is that right?

1 A Yes.

2 Q And you had different modules of the software you were
3 teaching to different groups of people at a time; isn't that
4 right?

5 A Yes, sir.

6 Q You would also make sure that the right people were being
7 trained at the hospitals; isn't that true?

8 A With the help of a site manager, yes. We were dependent
9 on them to tell us who those people were.

10 Q You would make sure that you assessed whether or not you
11 had everyone you needed to train on that list; isn't that
12 true?

13 A Correct.

14 Q For example, if someone happened to leave off the fact
15 that there was a second shift of nurses that you hadn't
16 trainer, you would bring that to someone's attention to make
17 sure that they were trained; is that right?

18 A Generally that was brought to our attention, but it was
19 resolved, yes.

20 Q But you would bring that to someone's attention if you
21 noticed it?

22 A If I knew it, I would.

23 Q Now we already talked about -- well, you talked about on
24 direct examination the different phases of the training.

25 There was a pre-implementation training and the post-

1 implementation training, right?

2 A Correct.

3 Q And the major difference is that pre-implementation
4 training was more classroom based before the site was actually
5 live, the software was working; is that right?

6 A Correct.

7 Q And the post-implementation training was more one-on-one
8 shadowing these folks as they were actually going about the
9 hospital using the new upgraded software?

10 A Correct.

11 Q In order to conduct that classroom style training you had
12 to coordinate with the hospitals to make sure you had a place
13 to train; isn't that accurate?

14 A No, I coordinated with the site managers for them to
15 procure classrooms, conference rooms, warehouses, wherever the
16 training needed to be done. We would have to do that.

17 Q So it was important that you have a place to train,
18 right?

19 A Absolutely.

20 Q Okay. Once you were actually in these training classroom
21 type settings you would do knowledge checks to make sure that
22 the folks were understanding the messages you were trying to
23 deliver; is that right?

24 A Correct.

25 Q You would have demonstrations to make sure, sort of

1 testing them, calling them out and saying Here's -- Let's go
2 over what we just did; is that right?

3 A That would be a very good description.

4 Q And at certain points you had to deal with the challenge
5 of folks who were reluctant to change; isn't that true?

6 A That was one, yes.

7 Q You had to exercise patience and repeated training and
8 make sure you used your skills as a trainer to make sure the
9 message was ultimately delivered to that person; isn't that
10 accurate?

11 A Correct.

12 Q In the post-implementation phase after the software was
13 sort of live you had sometimes to retrain some of these folks
14 on what you had talked about during the pre-implementation
15 phase; is that right?

16 A Yes.

17 Q That's because sometimes there was a gap in time between
18 when you first did the initial classroom setup and the time
19 the software was actually live onsite and they were using it;
20 is that right?

21 A That's correct.

22 Q Am I right that your work history that we talked about
23 earlier, that it helped you perform your job as a trainer?

24 A Oh, yes.

25 Q And that's because you had worked in training for

1 literally decades before you went to work for Shipcom?

2 A Correct.

3 Q It helped you communicate with the staff effectively; is
4 that right?

5 A Yes, it did.

6 Q And your experience in medical -- other medical-related
7 businesses also helped you with your training; isn't that
8 true?

9 A It was an advantage, yes.

10 Q And that's because you sort of knew how to speak the
11 language to folks you were training; isn't that accurate?

12 A That's correct.

13 Q Mr. Bethas, I believe on direct examination you talked
14 about your performance review that you had at Shipcom; is that
15 right?

16 A Yes.

17 Q And you talked about your self-evaluation part of that
18 performance review; is that true?

19 A That's true.

20 Q You also had a review done by your manager who was Ed
21 Price; isn't that right?

22 A Yes.

23 Q Mr. Bethas, I'm displaying on the screen here what is
24 Defendant's Exhibit No. 17. Do you recognize this document as
25 that performance review that your manager filled out?

1 A The heading, yes. Can you make that larger?

2 Q Yes. Do you recognize it now as the manager's evaluation
3 form review?

4 A Yes, it is.

5 Q Okay. And it looks like the review period is August 11th
6 of 2014, to August 11th of 2015; is that right?

7 A Yes.

8 Q Like to direct your attention to box no. 5 of this
9 document. You see box no. 5 there, Mr. Bethas, that I pulled
10 out on the screen?

11 A Yes.

12 Q And just to sort of explain what we have here. It's a
13 box that says proficiency at improving work methods and
14 procedures as a means toward greater efficiency. Is that what
15 it reads?

16 A Yes, it does.

17 Q Okay. So you're being evaluated on that item; is that
18 your understanding?

19 A Yes.

20 Q And over on the right-hand column you see vertically
21 written six different columns there, if you will. No. 5 is
22 "exceptional"; is that what it reads?

23 A Yes.

24 Q No. 4 is "highly effective"; is that right?

25 A True.

1 Q No. 3 is "proficient"; is that true?

2 A Correct.

3 Q No. 2, can you read that for me?

4 A "Inconsistent."

5 Q "Inconsistent." And then No. 1 is "unsatisfactory"; is
6 that right?

7 A Yes.

8 Q And the last box is "not applicable"; is that right?

9 A Correct.

10 Q Okay. So on No. 5 it looks like Mr. Price rated you as
11 No. 4, "highly effective" at that particular task; is that
12 right?

13 A Correct.

14 Q In his comments down below he provides a brief
15 explanation, doesn't he? You see that?

16 A Yes.

17 Q It says "initiated efforts to develop a virtual
18 procurement environment with VISTA," comma, "produced prototype
19 training kit"; isn't that right?

20 A Correct.

21 Q And you testified earlier that you did develop this
22 virtual procurement environment?

23 A No, I put together training kits with supplies in it that
24 would be shipped to the site ahead of time so we would have
25 the tools we needed to train.

1 Q Okay. So that's the second part that he's talking about
2 there, the prototype training kit; is that right?

3 A Yes.

4 Q Okay. And this was a kit that you delivered to the
5 different sites to help with your training; is that accurate?

6 A Yes, and they were locked.

7 Q This first part, the virtual procurement environment with
8 VISTA that we're talking about or that's mentioned in this
9 document, that's a reference -- an idea that you had and
10 pitched to Shipcom's development team; isn't that right?

11 A I presented the idea to my manager.

12 Q And the idea was to use this test environment as a
13 learning tool onsite at the hospitals; isn't that true?

14 A Actually more for trainers to be able to effectively know
15 the software, become subject matter experts. We never used
16 the training environment during our presentations.

17 Q But you did use it otherwise to become subject matter
18 experts; is that right?

19 A Correct.

20 Q Okay. And this was an idea that you came up with that
21 wasn't there, wasn't happening before you came up with it; is
22 that right?

23 A It was a resource that was in place. We got permission
24 to use it.

25 Q But people weren't using it before you came up with this

1 idea; is that what you're testifying to?

2 A The trainers were not, no.

3 Q Okay. You also suggested the idea because you thought
4 it'd be an effective learning tool for all those folks, right?

5 A Yes.

6 Q Now the training kit that we were talking about a moment
7 ago, that was like a model of the VA's hospital system; is
8 that accurate? Is that a good way to describe it?

9 A On a very small scale.

10 Q And it was a model of sort of the distribution point and
11 the reference of all these -- or the pathways for all of these
12 items to be distributed throughout the hospital; is that
13 accurate?

14 A Correct.

15 Q You used this model in your training as a technique to
16 sort of improve the process or to improve the learning
17 process, right?

18 A Correct.

19 Q Sort of a hands-on learning tool; wouldn't you agree with
20 that?

21 A Yes. We had the resources in place. They were provided
22 for at each site prior to me ever arriving onsite or any of
23 the trainers. However, there was oftentimes when materials
24 would be taken out of there and we'd show up and not have the
25 hands-on tools we'd need to train. So I put them in a small

1 box that was a representative of the tools that were exploited
2 already onsite. Had a lock on so when they showed up I knew
3 what I had to train.

4 Q Okay. So you just did it a different way so that you
5 could improve it and do it a better way, right?

6 A I could secure the environment that I was training in,
7 yes.

8 Q And the reason you wanted to do that, you thought it
9 would be an effective learning tool because of your prior
10 experiences in training; isn't that true?

11 A Yes, and I also wanted to be responsible for what -- I
12 wanted to have accountability.

13 Q Mr. Bethas, let's look at box no. 7. Do you see it
14 pulled up on the screen there? Do you see it?

15 A Yes.

16 Q And box no. 7 reads "ability to work independently"; is
17 that right?

18 A That's correct.

19 Q And it looks like Mr. Price checked the third box there;
20 is that true?

21 A Yes.

22 Q So he rated you as proficient in that category; would you
23 agree with that?

24 A Yes.

25 Q And you believed that you had the ability to work

1 independently; isn't that right?

2 A I did.

3 Q Mr. Price explained here, it reads "very thorough, making
4 sure training needs are met at go-lives and formal training";
5 isn't that correct?

6 A That's correct.

7 Q And you would agree with that assessment, wouldn't you?

8 A Yes.

9 Q In fact, you believed that you demonstrated that through
10 your successful training of so many folks; isn't that true?

11 A Yes.

12 Q Let's look at box no. 9. Box no. 9 reads "willingness to
13 take on additional responsibilities," does it not?

14 A Yes, it does.

15 Q It looks like you were rated by Mr. Price as highly
16 effective at this particular task; is that true?

17 A Yes.

18 Q And you agreed with that assessment, did you not?

19 A Yes, I did.

20 Q Mr. Price explained here "really goes the extra mile at
21 go-lives to meet the customer's needs," dash, "whatever they
22 may be"; isn't that what he put?

23 A Yes.

24 Q And in fact, you agree with that assessment, as well,
25 don't you?

1 A Yes.

2 Q You testified earlier that there were times when
3 management at these VA hospital sites would ask you to stay
4 around longer, in fact; is that true?

5 A And that's with regard, too.

6 Q And that's because of the benefits that you brought to
7 the table to your experience as a trainer, true?

8 A True.

9 Q Look at page number 4. At the top of this page it says
10 performance summary. And no. 1 says "list all aspects of
11 employee's performance that contribute to his or her
12 effectiveness." Did I read that right?

13 A Yes.

14 Q And here it says "excellent at developing rapport with VA
15 staff, leading to enhanced customer satisfaction and
16 attendance at training events"; is that right?

17 A Correct.

18 Q And you agreed with that assessment, did you not?

19 A I did.

20 Q The next line reads "good ideas" -- or excuse me, "good
21 knowledge of the system." Did I read that right?

22 A Yes.

23 Q And the system being referred to there is the CATAMARAN
24 system; is that right?

25 A Correct.

1 Q And you agreed that you had good knowledge of the system,
2 didn't you?

3 A I did.

4 Q And you developed that knowledge in the ways that we
5 talked about earlier, by playing with the test environment,
6 making sure you understood how it worked; is that right?

7 A Correct.

8 Q Review also says "good ideas for improving our training,"
9 dash, "-- training kits," comma, "virtual environment." Did I
10 read that right?

11 A Correct.

12 Q And those are the ideas that we talked about earlier.

13 A Yes, it is.

14 Q You would agree with me, Mr. Bethas, that over time you
15 became better at your job as a trainer?

16 A Yes.

17 Q You learned from your training experiences; wouldn't you
18 agree with that?

19 A Always.

20 Q You learned best practices to put in place to make
21 training more effective, didn't you?

22 A In that environment, yes.

23 Q And those ideas were implemented by Shipcom, weren't
24 they?

25 A These two were, yes.

1 Q You would consider those ideas well received by the
2 company, wouldn't you?

3 A Yes.

4 Q Now earlier you testified that you said your ideas were
5 sort of futile. Do you remember testifying to that?

6 A Yes, I do.

7 Q But here are two examples of when the company accepted
8 ideas that you had for improving training processes; isn't
9 that right?

10 A That is correct.

11 Q You believe that Shipcom was actually good about taking
12 suggestions or ideas; isn't that right?

13 A In these two aspects they were.

14 Q Mr. Bethas, let's look at that self-evaluation that you
15 talked about on direct examination.

16 MR. MACDOWALL: Your Honor, this is Defendant's
17 Exhibit No. 18.

18 BY MR. MACDOWALL:

19 Q Mr. Bethas, I pulled out the top portion of this document
20 under the words "job descrip --" -- "job definition," excuse
21 me. Do you see that?

22 A Yes.

23 Q And you write here "go-live implementation, version
24 implementation," is that right?

25 A That is correct.

1 Q And this refers to your selection by Shipcom for giving
2 training when the CATAMARAN system was actually going live at
3 the site; is that accurate?

4 A That's correct.

5 Q Okay. You were there to provide training to make sure
6 that that transition, it went smoothly; isn't that accurate?

7 A That was their end goal, yes.

8 Q You were also involved in implementation of new versions
9 of CATAMARAN when they came about and you would have to go
10 back to old sites to implement those new versions that were
11 being rolled out; isn't that true?

12 A I would have to train on those new versions. They had
13 already been implemented prior to me arriving.

14 Q But you were training on the new versions that were being
15 implemented or had been implemented, right?

16 A Training on the new versions after the go-live, I did
17 training.

18 Q Let's look at box no. 5. I believe you already talked
19 about this during direct examination. That's your handwriting
20 there, is that right?

21 A Yes.

22 Q And you put that you developed and accomplished BETA
23 Enterprise virtual training environment with VISTA interface
24 via CATAMARAN. Is that what that reads?

25 A Yes.

1 Q Okay. And you rated yourself in this category as
2 exceptional, right?

3 A Correct.

4 Q Exceptional at proficiency, at improving work methods and
5 procedures as a means toward greater efficiency; isn't that
6 true?

7 A Correct.

8 Q The next -- no. 2 that you write here says "developed
9 concept and built first training mobile kit." Is that right?

10 A Yes, we talked about that earlier.

11 Q And that's the kit that we talked about that you would
12 ship to the different sites to use as a hands-on learning
13 tool?

14 A Correct. The BETA Enterprise was something that was
15 already in place with development. I simply went to them and
16 asked them how they used it. They said I was welcome to use
17 it, as well.

18 Q Appreciate you adding that information, but just to be
19 clear, it wasn't being used at the sites in the way that you
20 wanted it used until you pitched that idea; isn't that right?

21 A It was actually used later to train our trainers.

22 Q Okay. But it wasn't being used in the way that you were
23 suggesting until you suggested it; isn't that accurate?

24 A That would be true. It was not a resource the trainers
25 had access to.

1 Q Let's look at box no. 7. This is that box about the
2 ability to work independently. Did I read that correctly?

3 A Yes.

4 Q And you rated yourself as exceptional in this category;
5 is that right?

6 A That's correct.

7 Q And you put "DC site go-live support solo for
8 approximately eight weeks"; is that what you wrote?

9 A True.

10 Q And that's because you were at the DC medical site by
11 yourself for eight weeks during this go-live time; is that
12 right?

13 A Correct.

14 Q You were the only person from Shipcom on that site for
15 that period of time; isn't that true?

16 A Correct.

17 Q And in fact, you were at that hospital for more than
18 eight weeks; isn't that accurate?

19 A Yes.

20 Q You ended up staying there longer than even this review
21 reflects?

22 A Yes.

23 Q There were other occasions when you were onsite by
24 yourself, you just can't recall how many; isn't that accurate?

25 A That's correct.

1 Q Let's look at box no. 9. Box no. 9 reads "willingness to
2 take on additional responsibilities"; is that right?

3 A Yes.

4 Q And you rated yourself in this category as exceptional,
5 as well; isn't that true?

6 A Yes.

7 Q You noted there, I think it says "virtual training
8 concept to completion." Is that what that says?

9 A Yes.

10 Q And when you were referring to that you were talking
11 about obtaining a copy of the development environment and
12 setting up additional records to make sure that the
13 demonstration environment worked properly; isn't that what's
14 that talking about?

15 A Correct.

16 Q And it was there to have a more pertinent training
17 experience; isn't that accurate?

18 A Correct.

19 Q Let's look at box no. 11. Box no. 11 here says
20 "adeptness at analyzing facts, problem solving, decision
21 making, and demonstrating good judgment." Is that what that
22 reads?

23 A Yes.

24 Q And you rated yourself as exceptional in that category,
25 didn't you?

1 A Correct.

2 Q And you wrote in the handwritten portion "has
3 demonstrated site lead skills and worked as public relations
4 during crisis management," open parens, "(DC and Durham),"
5 close parens. Is that right?

6 A That's correct.

7 Q That's because you actually did those things at those
8 particular sites, demonstrating those site lead skills; is
9 that accurate?

10 A I would have to close the gap on some of the skills that
11 the site lead project managers did not have. Empathy was one
12 of them, and being kind, listening was the public relations
13 portion. By that time, often they were in crisis mode.

14 Q And that's why you were the only one from Shipcom left on
15 that site, is that right?

16 A Yes.

17 Q Let's look at page number 4 of this document. Talk about
18 that first portion there again, Mr. Bethas, the performance
19 summary. And paragraph number 1 says "list all aspects of
20 employee's performance that contribute to his or her
21 effectiveness." Did I read that right?

22 A Yes.

23 Q And you wrote "has developed ability to continually
24 improve upbeat attitude in/under adverse conditions, has great
25 ability to be able to work with any site as Shipcom employees'

1 willingness to" and what does the rest of that read?

2 A "Travel or change work locations."

3 Q Okay. Other than the part that you just finished reading
4 did I read that accurately?

5 A Yes.

6 Q And you obviously agree with that assessment because you
7 wrote it; is that right?

8 A Correct.

9 Q And you worked to continually improve by making sure you
10 were learning the software and teaching it to the best of your
11 ability to the folks you were training; is that accurate?

12 A That was a given and I also worked very hard on my
13 attitude and my presence while onsite.

14 MR. MACDOWALL: Your Honor, at this point we pass
15 the witness.

16 THE COURT: All right. Redirect?

17 MR. SLOBIN: Yes, Your Honor.

18 THE COURT: Mr. Slobin.

19 REDIRECT EXAMINATION OF CHARLES BETHAS

20 BY MR. SLOBIN:

21 Q Hello again. Charles, you -- Mr. MacDowall went over
22 some of your other jobs that you had before Shipcom. You
23 remember that?

24 A Yes.

25 Q Okay. In a broad picture here, did you have the same job

1 duties at Shipcom as you did at your other employers?

2 A Absolutely not.

3 Q Okay. And we've established that you were essentially a
4 teacher at Shipcom. Tell me about --

5 MR. MACDOWALL: Objection, Your Honor,
6 mischaracterizes the testimony.

7 THE COURT: Overruled.

8 BY MR. SLOBIN:

9 Q We can keep going. So I've said we've established you're
10 a teacher. Tell me what generally you were doing in your
11 other jobs that was different than that aspect?

12 A I would suggest best practices, demonstrate solutions
13 that I came up with. I took control of the projects from
14 being given a blueprint for an oncology hospital and a
15 deadline they would see their first patient. I made
16 everything happen in between.

17 Q Okay.

18 A So I had much different experiences and responsibilities
19 with the other companies that I've worked for.

20 Q And what were some of those responsibilities that were
21 different or that stand out in your mind as being different
22 than when you were at Shipcom?

23 A Working in the private sector versus a government
24 facility. That was the largest difference. I was also
25 somewhat shackled into a very fine subset of my skill sets I

1 had enjoyed with previous positions. So, in other words, I
2 was continuing on a very narrow path.

3 Q You're talking at Shipcom?

4 A Yes.

5 Q Okay. And I believe that it came out that you had talked
6 about you'd done training at other -- for other employers.

7 A Oh, sure.

8 Q Okay. Were you involved in any of the training
9 materials, that process of creating or content or anything?

10 A To some extent previously, yes.

11 Q Okay. All right. And so, when Mr. MacDowall said Hey,
12 you'd been paid a salary at your other employers and you
13 expected to be paid a salary at this job, is that -- I mean
14 that's a fair statement?

15 A Yeah. It was traditional employment compensation.

16 Q Okay. But once you got in you realized that the jobs
17 were different; is that fair?

18 MR. MACDOWALL: Objection, Your Honor, leading.

19 BY MR. SLOBIN:

20 Q Is it fair to say there was differences between the jobs?

21 MR. MACDOWALL: Objection, Your Honor. This is
22 still leading.

23 THE COURT: Sustained.

24 BY MR. SLOBIN:

25 Q Okay.

1 A Working at Shipcom was like working --

2 Q Mm, mm, mm. I got to ask you a good question, I'm sorry.

3 Well, you've already established that. Okay. All
4 right. I'll move on.

5 Let's talk about this virtual training kit and your
6 box. That module box that we were talking about with your
7 little lock and everything. All right. What's in there?

8 A There were small sections of shelving. There was a
9 louvered rack that could sit on a table. There were four bins
10 that could go on it with alcohol swabs. A few pieces of
11 inventory. It was hooked to our laptop that we also projected
12 from. It was a representation of the VA's entire networking
13 system in one box that I could ship locked up and know I had
14 when I got there.

15 Q Okay. And what were you using those items for?

16 A Props.

17 Q Okay. All right. But did the content of the materials
18 that you were training the VA staff on, did that change?

19 A Oh, no. They would have a presentation that would
20 possibly be concerning using the Motorola handheld device.
21 They'd show a picture of it on the screen and then tell steps
22 about how it would be used. And I would simply hold one up
23 and go "this is what one looks like; here, you hold it."

24 Q Okay. So Mr. MacDowall asked you a series of questions
25 about you making the VA's work environment more efficient. Do

1 you recall that?

2 A Yes.

3 Q Okay. Were you giving advice to the VA on the efficiency
4 of what they were doing?

5 A No, they already had the work processes down and they
6 were very well defined. And they did not have the ability --
7 "they" being the employees of the VA, did not have the ability
8 to deviate in any way from what they had always been doing.

9 Q Okay. And again, whether it's syringes or whatever, are
10 you telling them, Hey, how many things to order?

11 A No. Those were -- that was part of the software to
12 provide. That was the reason to have the software to begin
13 with is so that based on usage they would know how many to
14 order based on the lead time to get them to the site.

15 Q All right. And do you have any idea how much of any
16 product the hospital would need?

17 A I had zero clue.

18 Q Okay. And did you offer any advice on how much product
19 they should order?

20 A That would have been presumptive. No.

21 Q Okay. Were you offering any solutions to the VA
22 hospitals?

23 A It was a CATAMARAN system.

24 Q Okay. But again, that's something you didn't create?

25 A No.

1 Q All right. Mr. MacDowall asked you a lot of questions
2 about you spending time to understand the materials that you
3 were training on. Remember that?

4 A Yes.

5 Q Okay. Do you see anything wrong with that?

6 A No. Generally when I get in front of an audience I need
7 to have enough credibility to be able to ask for the attention
8 of the audience and be a solution for them.

9 Q How would you describe yourself as a teacher?

10 A Experienced, perceptive, task-driven.

11 Q How would you describe yourself as an employee?

12 A Model.

13 Q Okay. Do you have high standards?

14 A Yes, I do.

15 Q Did Shipcom management ever call you down to Houston to
16 sit down with you and ask you about your ideas and how to
17 better make the teaching -- or how to make the teaching
18 environment better?

19 A Absolutely not.

20 Q Okay. You mentioned a couple of ideas that you had
21 offered up. Is that really the extent of it?

22 A Via email, yes.

23 Q Okay. And we talked about just the two ideas.

24 A (No audible response.)

25 Q Is that a yes?

1 A Yes.

2 Q You'd mentioned in your review something about public
3 relations.

4 A Yes.

5 Q Okay. Were you involved -- and I know I asked you this
6 earlier, but were you involved in actually doing public
7 relations for the company? What did you -- Or let me ask you
8 a better question. What did you mean by that?

9 A Well, I was the representative of the company. I
10 represented what their mission was within the environment of
11 our client. And I made sure that they understood that
12 Shipcom, as well as myself personally, had their best interest
13 in mind, that we were sympathetic and that we would be there
14 as long as it took to see the project through.

15 Q Okay. And why would you do that personally?

16 A It's based on the core values that I was raised with.
17 That being integrity.

18 Q I'm going to put back up here --

19 (Pause -- talking off the Record.)

20 BY MR. SLOBIN:

21 Q This is the job description of trainer that we talked
22 about earlier. Do you recall this?

23 A (No audible response.)

24 Q Do you see public relations on there?

25 A No, it's not on there.

1 Q Okay. Would you say that was one of your primary duties?

2 A It was something that needed to be done. I had the
3 ability to do it, and while I was there I accomplished that.

4 Q Well, what was your primary duty?

5 A My primary duty was to give them the information about
6 the system and then exit the building afterward.

7 Q Okay.

8 MR. SLOBIN: I'll pass the witness, Your Honor.

9 THE COURT: Thank you.

10 And for the Record this exhibit you just put up, can
11 you give us the number?

12 MR. SLOBIN: I'm sorry. It's Plaintiffs' Exhibit
13 No. 10.

14 THE COURT: Thank you.

15 Any recross, Mr. MacDowall?

16 MR. MACDOWALL: (No audible response.)

17 THE COURT: Mr. MacDowall, any Recross?

18 MR. MACDOWALL: No, Your Honor.

19 THE COURT: All right. You may step down,
20 Mr. Bethas. Thank you.

21 (Witness steps down.)

22 THE COURT: Ladies and gentlemen, we will take our
23 break at this point and work on getting the microphone fixed.
24 Let's take a 15-minute break. So be back just before
25 10:00 a.m.

1 (Recess taken from 9:42 a.m. to 9:57 a.m.)

2 (Outside the presence of the jury.)

3 COURTROOM CLERK: Do you want me to call?

4 THE COURT: I would, but we're ready. She's ready.

5 MR. SLOBIN: I'm sorry, Your Honor. Do you want me
6 to put a witness on the stand?

7 THE COURT: Is the jury ready? We'll go ahead and
8 let the jury come in and you can --

9 MR. SLOBIN: Okay.

10 THE COURT: And just for the witnesses benefit, we
11 are not going to move the microphone back and forth on the
12 desk; just adjust the mouth piece. And we have attempted to
13 turn up the volume. So hopefully that will work better.

14 UNKNOWN 1: I thought I was going deaf.

15 UNKNOWN 2: I could hear me fine.

16 THE COURT: Ready.

17 COURTROOM CLERK: All rise for the jury.

18 (Jury enters courtroom 9:57 a.m.)

19 THE COURT: Be seated, please. Mr. Slobin, you may
20 call your next witness.

21 MR. SLOBIN: Your Honor, we call -- Plaintiff's call
22 Chris Kehn to the stand.

23 THE COURT: Raise your right hand, Mr. Kehn.

24 (Witness sworn.)

25 DIRECT EXAMINATION OF CHRISTOPHER MICHAEL KEHN

1 BY MR. SLOBIN:

2 Q Good morning, Kehn. How are you doing today?

3 A I'm good, a little tired, but --

4 THE COURT: We adjusted the volume on the
5 microphone, ladies and gentlemen, so it should be louder now.

6 MR. SLOBIN: I may wake everybody up.

7 BY MR. SLOBIN:

8 Q Will you please state your full name for the record?

9 A Christopher Michael Kehn.

10 Q Okay. And Mr. Kehn, are you familiar with Shipcom?

11 A Yes, I am. I worked there from July 2014 until about
12 March of 2016.

13 Q Okay. And what was your position at Shipcom?

14 A Trainer.

15 Q All right. And what did you essentially do as a trainer?

16 A We go on site, teach the software using PowerPoint slides
17 rinse, wash, repeat. Basically site to site to site.

18 Q Okay. And do you mind unpacking that a little bit for
19 me? Give me a little more and the jury a little more
20 understanding on what you were doing on a day-to-day basis?

21 A On a day-to-day basis, we get on site, we would
22 present -- well, it appears obviously -- but prior to go-live,
23 what we would do is we go on site, teach the modules that we
24 had set up previously and then -- not we, sorry, but.

25 Q Don't worry. I understand the nerves. Tell me kind of

1 what you would do on a day-to-day basis. And let's just talk
2 about kind of pre-implementation.

3 A Okay. We would teach using decks that were created. We
4 would teach using PowerPoint slides.

5 Q Okay. And when you're teaching, how long are these
6 courses or classes or these presentations that you're giving
7 to the VA?

8 A They range anywhere between 45 minutes per module to an
9 hour and half per module. I know that the slide decks that
10 you had anywhere between 45 to 55 PowerPoint slides in each
11 one.

12 Q Okay. And when you -- is there kind of an average range
13 of whether it's hours or days that it would take to teach the
14 course?

15 A I think each site we were at were two weeks, you know, it
16 just kind of varied. I mean, it would be the same thing. It
17 would be going just to channel sites.

18 Q Okay. And for the entire two weeks, you're going
19 through -- is it you're going through PowerPoint
20 presentations?

21 A Correct.

22 Q Okay. And you were teaching the CATAMARAN Software; is
23 that right?

24 A That is correct.

25 Q Were you involved in the creation or development of the

1 curriculum that you were charged with teaching?

2 A No, I was not.

3 Q Who was in charge of creating that curriculum?

4 A That would typically be development. They put the slide
5 decks together. If we did anything with them at all it would
6 be just for the format of it.

7 Q Tell me the process or the people involved when Shipcom
8 is implementing the information, the CATAMARAN System.

9 A There'd be a site lead at each facility. There would
10 also be blueprint on site. There would be -- typically JP was
11 involved in (indiscernible) kind of the head of the program.

12 Are you talking about on-site or just?

13 Q No, on-site.

14 A On-site. The site leads were there. They ran the show
15 at each facility. There were also blueprints there.
16 Occasionally one of the V.P.'s would be there. But it was
17 pretty much the site leads that ran it.

18 Q Okay, what do you mean that they ran the show, the site
19 leads?

20 A They would put up -- they would determine what each
21 facility needed. They would determine which facility needed,
22 what they needed to be trained on. So if there was, you know,
23 surgery day, -- if one facility had the kiosk and the other
24 facility didn't have a kiosk, they would determine whether or
25 not we would, you know, take module or pull the module from

1 the training deck.

2 Q Okay. Were you responsible for evaluating what was going
3 to be taught to the hospital?

4 A No, not at all.

5 Q Did you have any input into what was going to be taught
6 to the VA hospitals?

7 A No, I don't believe so.

8 Q Could you deviate from any of the training materials?

9 A No, we were not supposed to deviate from the training
10 materials. We weren't even supposed to hide certain slides.
11 It just -- yeah, we didn't do anything with the deck itself.

12 Q Okay. And I get that you were not supposed to, but did
13 you anyway?

14 A If it didn't make sense, as in like the kiosk situation,
15 yes, we would just hide it if we didn't hear from site lead
16 before. But that was the only time we'd ever deviate.

17 Q Okay. So, give me an example of something that just
18 wouldn't make sense.

19 A Well what wouldn't make sense is if we would go out to a
20 facility and it didn't have like the kiosk that they're using
21 now. But with the kiosk, if the facility didn't have one, why
22 would we train on it. There'd be no need to train on how to
23 use it, so we just pulled that from the slide.

24 Q Were you -- were you involved in the training schedule,
25 like where you would train or when you would train?

1 A No, our manager would basically tell us where we were
2 going. Sometimes, you know, the day before we were supposed
3 to leave, we'd get our itinerary. He'd be in charge of
4 telling us where we would go.

5 Q And how many hospitals did you train at?

6 A Anywhere between 30, 50 somewhere. It's a wide range.

7 Q And describe for me that kind of process of going from
8 place-to-place.

9 A It was miserable, to be honest. But a lot of times our
10 travel itinerary wouldn't even be set prior to meaning that we
11 were buying all our tickets last minute. So we would
12 get -- we'd get the information on where we were going the day
13 before.

14 We just -- kind of where we need to go to put out a fire.
15 By that I mean that where we need to go to provide the
16 facility more training.

17 Q So how much notice were you given on you need to be there
18 or where whatever place you need to go to?

19 A Less than 24 hours sometimes. I had gotten my itinerary
20 the midnight before I was supposed to leave for taking a
21 flight the following day.

22 Q Okay. All right. And who's paying for your tickets?

23 A We were. We're all taxpayers, right? No, the -- would
24 technically paying for the tickets. However, sometimes it
25 would even be us -- well not the tickets, but the rental cars

1 and stuff we would have to cover the cost for that
2 occasionally on our own.

3 Q Did you get reimbursed for those costs?

4 A Eventually yes. I know that a few of us had issues with
5 reimbursement somewhere two to three months after the fact we
6 would finally get out money. I know a couple of people had
7 issues with credit card --

8 MR. MACDOWALL: Objection, Your Honor. The witness
9 is -- he's testifying to hearsay or speculating.

10 THE COURT: Sustained.

11 BY MR. SLOBIN:

12 Q That's all right. I'm moving on anyway. You'd indicated
13 a little more and I don't want -- you don't need to spend a
14 ton of time on this, but tell us again the difference between
15 the pre-implementation and the post-live.

16 A Well one we'd be training with slide-decks. The other
17 you would be training in person -- both in person. Excuse me.
18 We'd be training in a live environment. So the software would
19 actually be used by the facility. We would go and we'd just
20 follow around supply techs or follow around the warehouse --
21 whoever is using our software.

22 So what we would do is just tag along with them and then
23 help them with their order flows.

24 Q Okay and when you were doing the kind of -- was it
25 one-on-ones or how many did you -- the kind of post-live?

1 A Typically it was a one-on-one. Usually it would be like
2 either two supply techs with us or three supply techs with us
3 because there'd be -- we didn't have enough trainers on site,
4 to, you know, meet the needs. So we always have to get a
5 collective group of people together when we were training.

6 Q Okay. And what materials were you training them from?

7 A The slide decks and the handouts, the quick reference
8 guides -- which I believe Chad has mentioned earlier. It
9 would be those.

10 Q All right. And did you have any involvement in drafting
11 any of that information?

12 A No.

13 Q Did anyone from Shipcom come to you and ask if you would
14 revise or alter any of their training materials for a better
15 training experience?

16 A Not for a better training experience. I mean, like we
17 said, we would change maybe the form as in like the
18 color -- not the color, but just the grammatical errors.
19 That's what we would change on them.

20 Q Okay. But other than grammatical errors, are you
21 changing the content of the materials?

22 A No, that was all handed to us.

23 Q Okay, here comes the laundry list. Did you -- and I'll
24 try to, again, break it out. Did you do any work directly
25 related to tax, finance or accounting?

1 A No, I did not.

2 Q All right. Did you do any work related to budgeting or
3 auditing?

4 A No.

5 Q Did you do any work related to insurance, quality control
6 or purchasing?

7 A No.

8 Q Did you do any work relating to procurement, advertising
9 or marketing research?

10 A No.

11 Q Did you do any work related to safety and health or
12 personal management?

13 A No.

14 Q Did you do any work related to human resources, employee
15 benefits or labor relations?

16 A Absolutely not.

17 Q Did you do any work related to public relations or
18 government relations?

19 A No.

20 Q Did you do any work directly related to computer network?

21 A No.

22 Q Did you do any work directly related to internet and
23 database administration?

24 A Not at all.

25 Q Did you do any work directly related to legal and

1 regulatory compliance?

2 A No, sir.

3 Q Did you -- were you engaged in running Shipcom?

4 A No, we trained.

5 Q Okay. Were you responsible for determining Shipcom's
6 overall course or policies?

7 A No, I was not.

8 Q Did you design any of the CATAMARAN software?

9 A No. It was designed prior to.

10 Q Were you part of any team that designed the CATAMARAN
11 software?

12 A No, I was not.

13 Q Did you advise the VA hospitals on how to configure and
14 modify the CATAMARAN software to run their business?

15 A Not at all. Not at all.

16 Q Did you have authority to formulate or affect Shipcom's
17 management policies?

18 A No, I did not.

19 Q Did you have any authority to interpret or implement
20 Shipcom's management policies?

21 A No, I did not.

22 Q Did you have any authority to formulate or affect
23 Shipcom's operating policies?

24 A No, sir.

25 Q Did you have any authority to interpret or implement

1 Shipcom's -- oh I'm sorry -- Shipcom's operating policies?

2 A No.

3 Q Were you able to commit Shipcom in matters that have
4 significant financial impact?

5 A Not at all.

6 Q Did you have any authority to waive or deviate from
7 established policies and procedures without prior approval?

8 A No.

9 Q Did you have authority to negotiate and bind Shipcom on
10 significant matters?

11 A No, I did not.

12 Q Did you provide consultation or expert advise to Shipcom
13 management?

14 A No.

15 Q Were you involved in planning long or short term business
16 objectives for Shipcom?

17 A No, we were not.

18 Q Did you investigate and resolve matters of significance
19 on behalf of Shipcom's management?

20 A No.

21 Q Did you represent the company in handling complaints,
22 arbitration disputes, or resolving grievances?

23 A No.

24 Q Did you ever negotiate a contract with the VA?

25 A We did not.

1 Q Did you negotiate any pricing terms with the VA?

2 A No.

3 Q Did you participate in any management meetings at Shipcom
4 regarding the direction of the company?

5 A No.

6 Q Did you have any input into the hospitals that you
7 trained at?

8 A No.

9 Q Did you ever discipline employees?

10 A No.

11 Q Did you devise any marketing plans?

12 A Not at all.

13 Q Did you decide whether or how to recruit potential hires?

14 A No.

15 (Pause in the proceeding.)

16 THE COURT: I'm not sure what that was.

17 MR. SLOBIN: I think it was Mr. MacDowall. No. I
18 don't know what that was.

19 All right, sorry. I was correct.

20 BY MR. SLOBIN:

21 Q I believe you told me when we started with Shipcom. When
22 did your employment end?

23 A March of 2016.

24 Q Okay. And why did your employment end?

25 A Pretty much we lost the contract with the VA and so the

1 300 employees that we added, all went back to whatever jobs
2 they could go to afterwards.

3 Q Okay. Let me go through some Exhibits with you.

4 A Okay.

5 Q Will you turn to Exhibit -- Plaintiff's Exhibit 33? Do
6 you see that?

7 A Yes.

8 Q Okay. And what is Plaintiff's Exhibit 33?

9 A That's an employment offer I received.

10 Q Okay. And does it describe the duties that you were to
11 do while at Shipcom?

12 A Yes, it does.

13 Q Is that a fair representation?

14 A It's fairly accurate, yes.

15 Q Okay. And does it indicate your compensation?

16 A It does. Number two.

17 Q Okay. How were you compensated?

18 A Annual salary was \$65,000 paid monthly.

19 Q Okay. Did that take into account the hours that you
20 worked or was it just a salary?

21 A I guess when we signed this, we were indicating that we
22 were going to be working 70 to 80 hour weeks at some times.
23 So when I did accept this, this was more along the lines of
24 accepting it based on, you know, thinking you're average
25 working average work week of between, you know, 40, 55 hours.

1 Q Okay. And would you say that you would work more or less
2 than what you thought you were going to work?

3 A Obviously, I think we worked more. You know, upwards of
4 20, 24 hours in a day I worked.

5 Q Okay. All right, I'm going to put up Plaintiff's Exhibit
6 34. I'm going to go through just a couple of things. Do you
7 know what this document is?

8 A I believe it's a performance review.

9 Q Okay. And who prepared this document?

10 A Our manager, Ed.

11 Q Will you read item number one for me?

12 A "Skill and proficiency in training on assignments. Chris
13 does a good job conducting instructor lead training and is
14 very effective at providing go-live support."

15 Q Okay. Two things. Just speak a little bit slower for
16 the Court Reporter, maybe.

17 A Yes.

18 Q And would you agree with that statement?

19 A Yes, I would agree with that statement. It was
20 just -- we conduct our training, we instruct the VA how to use
21 the software, and I guess that I was fairly effective. I
22 hope.

23 Q Okay. Will you turn to -- you can't. Turn to the next
24 page in your book. Will you take a minute and read item six
25 for everybody?

1 A "Communicates effectively with supervisor, peers and
2 customers. Too often negative comments are made about the
3 company to coworkers and myself. For example, when I
4 announced the new trainers I hired and asked everyone to the
5 team, their response was an angry announcement stating he
6 would not recommend this company to your worst enemy."

7 Q Did you really say that?

8 A Yes, I did.

9 Q Okay and why is that?

10 A Around this time is the time where -- well, I had a good
11 feeling there's some issues with (indiscernible) and this was
12 why I wrote the email that you guys saw the other day. That
13 was continuing on during this time as well. And just conflict
14 between myself and my manager.

15 Q All right, let's bring up that email so that we talk
16 about it. It's Exhibit 41 in your book. And before we kind
17 of get into digging into the email, would you just give me
18 some context as to why you wrote Exhibit 41?

19 A I think it was briefly touched on that it had to do with
20 Father's Day. What happened was that my father was scheduled
21 for surgery the Tuesday after Father's Day and the week prior
22 to that I found out my grandfather was diagnosed with terminal
23 stage four cancer.

24 So what I did is I told both my manager and the travel
25 team to make sure that if they book my flight on a Sunday that

1 it's got to be later than 6:00 p.m. I figured that was an
2 easy way to, you know, being able to spend some of that time
3 with my family that day.

4 And this was also the trip where I received my itinerary
5 the midnight before the day I was supposed to travel. So I
6 get my itinerary at midnight and it says that my flight is
7 supposed to be leaving at 2:00 p.m.

8 I went ahead and said no that's not going to work and I
9 made changes to my travel so I could spend more time with my
10 family that weekend and then went on to the site afterwards on
11 Monday morning -- which is what we usually travel was Monday
12 morning. But we certainly get forced to travel on Sundays as
13 well.

14 Q Okay. So just to be clear, let me just unpack some of
15 the stuff you said. You had some -- your dad was going to
16 have surgery?

17 A Correct.

18 Q It was father's day?

19 A Yes.

20 Q And did you say it was your grandfather's birthday?

21 A No. My grandfather had -- was just diagnosed with
22 terminal cancer and they gave him about a month at that point.

23 Q Okay, all right. And you're saying that midnight -- so
24 we're talking like Saturday night?

25 A Yeah.

1 Q For a travel the next morning at or next afternoon at
2 2:00?

3 A Correct. And that was also after asking specifically if
4 we could -- if I could -- make sure that if I traveled on that
5 Sunday that it was much later than that 2:00 p.m. flight that
6 came my way.

7 Q Okay. And then is that what prompted this email?

8 A Yeah. I mean it was that and it was -- excused me. I
9 was being written up for that is what prompted this email.
10 Was the fact that I was written up for making the changes even
11 though I communicated to both my manager, his manager, what I
12 was going to be doing.

13 And then actually asked for a review right after that
14 too. And instead of a review I was -- instead of a review I
15 didn't hear back from either my manager, my manager's manager
16 and the next thing I got was a performance improvement plan
17 right after that.

18 Q All right. How would you describe your emotional state
19 at that point?

20 A Not the best, I guess. I was a little angry, a little
21 worried, obviously too.

22 Q Okay. And what was your goal in writing this Plaintiff's
23 Exhibit 41?

24 A I wanted to be vocalize what I hadn't vocalizing too much
25 of the people that I had seen on site. I wanted to let our

1 management know, our legal know, our VPs know that I think we
2 were having issues and I think they needed to be addressed and
3 I was trying to get an audience for a long time by talking to
4 site leads, talking to managers about this prior to. That was
5 even, let's see, April of 2015 is when I started discussing
6 this FLSA stuff.

7 When I didn't get any audience, then I got the
8 performance improvement plan. This is what kind of resulted.
9 Not the best way to handle it as I state later on, but yes.

10 Q Okay, so let's -- again let's unpack that. So did you
11 just testify that as early as April of 2015, you mentioned
12 FLSA issues to the company?

13 A I'd say March even -- late March.

14 Q Okay.

15 A Just after Justin left and after a bunch of the good
16 employees started leaving Shipcom, there was very little
17 retention. So frustration grew and that's when I started to
18 communicate this.

19 Q Okay. And who did you talk to at the company?

20 A I talked to my manager about it, Ed Price. I talked to
21 Rahul Jani (phonetic) who is a site lead at a
22 different -- Durham, excuse me. I talked to the site lead at
23 Fayetteville about it. I talked to Rahual Gupta (phonetic)
24 about it, Durham.

25 There's numerous people I talked to about this prior to

1 this email.

2 Q Okay. Let's kind of -- I hope I captured all the names.
3 So let's make sure we get through this, okay. So you said you
4 spoke to Ed Price?

5 A Correct.

6 Q Who is Ed Price?

7 A Ed Price is the training manager.

8 Q All right. And when do you think you spoke to Ed Price?

9 A I would say he was in April, maybe March, late March,
10 early April.

11 Q Okay. So it's well before this email, right?

12 A Yes, well before this email.

13 Q Okay. And what do you recall talking to Ed Price about?

14 A That I think that we're -- our job should have been -- we
15 should have been paying overtime. That's what I thought.
16 Based on our job duties and based on what I know.

17 Q Do you have any experience in the FLSA?

18 A Employment line, I was a practicing attorney for roughly
19 two years prior to this position.

20 Q Okay. So we didn't go over that. Let's just establish
21 that really quickly.

22 A Okay.

23 Q And again, are you an employment lawyer?

24 A No, I'm not an employment lawyer. I did divorce work.

25 Q Okay. All right, but you did go to law school?

1 A Yes, I did.

2 Q Okay. Where did you go to law school at?

3 A Ohio Northern University.

4 Q Okay and did you get a degree from there?

5 A Yes, I did.

6 Q All right and did you take the bar exam?

7 A Yes, I did.

8 Q All right and so you were actually a practicing attorney;
9 is that fair?

10 A That is fair. I was a practicing attorney in Ohio.

11 Q Okay. And how long did you practice?

12 A A little under two years. Approximately two years.

13 Q Okay. And what kind of law did you practice?

14 A Mostly family, guardian ad litem.

15 Q All right. And when you were in law school, did you take
16 any classes that would related to the FLSA?

17 A Employment law.

18 Q Okay. And was there something that was going on at work
19 that triggered memories of law school?

20 A It was the monotonous day-in-day-out routine that we had.
21 It was just the same thing over and over again. And then
22 knowing that we had no responsibility in terms of management,
23 employees and basically the laundry list of things we just
24 went down. I was pretty sure that we were incorrectly
25 classified to begin with.

1 Q All right. And so you'd indicated you talked to Ed
2 Price. And then I believe you mentioned the name Rahul Jani?

3 A Yes.

4 Q All right. And for the record that's R-A-H-U-L?

5 A R-A-H-U-L.

6 Q J-A-N-I?

7 A Correct.

8 Q All right, who is Rahul Jani?

9 A Rahual Jani is what I would consider one of the inner
10 circle individuals part of the families who come. He was a
11 site lead, essentially. He was one of the people that ran his
12 site and --

13 Q And what do you mean by inner circle?

14 A Inner circle would have been -- not anything in a bad
15 way, but it was kind like the joke that we talked about in the
16 pool, the stream. Rahul Jani is like the younger group of
17 people that were very close with our president of
18 (indiscernible).

19 Q And what did you talk to Rahul Jani about?

20 A Same thing. That we -- I thought there was violations
21 there and I wanted him to be aware of it as well. He was one
22 of my closer friends in the company, so.

23 Q And when do you recall talking to Rahul Jani?

24 A I recall talking to Rahul Jani -- which I believe was
25 either April or May.

1 Q All right. You mentioned somebody, I believe, Malek?

2 A Yeah Malik. Malek is essentially the acting HR director
3 prior to Andy Diaz coming on.

4 Q Okay. And do you recall when in time you spoke to Malek?

5 A Yes, that was when I was in the Houston office, again he
6 was somebody I considered close friend. Another person I felt
7 like I could talk to. So we discussed, you know, these
8 violations I thought were going on. I believe that was in
9 April as well.

10 Q Okay. All right, for the record it's M-A-L-E-K.

11 A Correct.

12 Q Did you also mention Rahul Gupta?

13 A Yeah Rahul Gupta is one of the VP's of something. I
14 can't remember the VP of -- we had a ton of them, so.

15 Q Okay. And what did you talk to Rahul Gupta about?

16 A Same thing. FLSA violations that I thought were -- I
17 thought going on in the company.

18 Q All right. And when in time do you believe spoke to
19 Rahul Gupta?

20 A It was also when I was in the Houston office. It should
21 have been -- I believe it would have been April of 2015.

22 Q All right. Did you mention someone Ms. Shreen
23 (phonetic)?

24 A Yes. Ms. Shreen Konava (phonetic).

25 Q Okay. Who is that person?

1 A She, I guess the renaissance woman of the company for a
2 time period before she left because of frustrations as well.
3 She did a little bit of everything. She was Reddy's right
4 hand man for awhile. She was business development. She
5 drafted business development plans. She kind of was an
6 administrative assistance. She also booked travel. She did a
7 little bit of everything within the company.

8 Q Okay. And when do you recall talking to her?

9 A I think as early as January, February because it was
10 about during the time we were dating for awhile.

11 Q Okay. All right, January, February of 2015?

12 A Correct.

13 Q And -- all right, so lets get back to Exhibit 41. All
14 right, you see here, consider this email notice of the issues
15 below?

16 A Yes.

17 Q All right. So if you don't mind, just kind of summarize
18 what you're telling the company at this point.

19 A One is that (indiscernible) is classified. It's kind of
20 why we're sitting here right now. And the second one is just
21 something I threw in there that I thought may have been, you
22 know, we weren't paying any state taxes to the states that
23 we're traveling to. And I know that there's an exception --

24 MR. MACDOWALL: Objection, Your Honor. As he said,
25 he's testifying to actual fact. He's speculating. There's no

1 foundation for that.

2 MR. SLOBIN: He's just summarizing the document,
3 Your Honor.

4 THE COURT: I don't think that the witness is
5 testifying to that as a certainty. He's just summarizing the
6 information in the document, so.

7 MR. MACDOWALL: So as long as that's true, Your
8 Honor. It sounded like he was giving the reason he was
9 complaining as a fact underlines.

10 MR. SLOBIN: Your Honor, I have a solution. I can
11 move on, but -- I'm sorry.

12 THE COURT: Okay, well just for the jury's purposes,
13 the testimony and the document are not representations to the
14 truth of whether or not there were any tax code violations.
15 And the witness is just testifying about what he wrote in the
16 document.

17 So let's move on.

18 BY MR. SLOBIN:

19 Q Will you do me a favor and will you please read item
20 number one?

21 A "I believe I, as well others, have been miss classified
22 under FLSA laws. I should have been paid hourly entitled to
23 overtime based on the statute how Courts have interpreted it.
24 My role as a trainer does not fit within any of the exemptions
25 the statute carves out. I'm asking to be compensated for the

1 additional hours I've worked plus interest."

2 Q All right. And item two, please.

3 A "You may be violating multiple taxes -- multiple state
4 tax codes. My paycheck does not withhold any state taxes and
5 some of the states we have worked within require individuals
6 to file taxes if you perform any work related tasks within
7 state lines."

8 Q Okay. And then just continue on to "this company."

9 A "This company ingest, digest and spits up nothing but
10 waste when it comes down to their employees. I can easily
11 give you an overwhelming number of examples that would fall
12 inline with my previous statement. Companies that treat their
13 employees this way need to simply go away. The company return
14 on investment and their overall financial situation is
15 undoubtedly important, but that should always take a backseat
16 to the individuals who with their blood, sweat and tears into
17 keeping the cogs running smoothly day in and day out."

18 Q That's enough. How would you describe yourself as an
19 employee?

20 A It's all about our time. It's all about their customer.
21 And I would put my blood, sweat and tears into that. I did
22 everything I could to make sure that the VA was happy. And to
23 sacrifice my own.

24 Q Okay. Do you care about what you do?

25 A Absolutely. I care about everything I do.

1 Q Okay. I think in some questioning yesterday,
2 Mr. Notestine when he was talking to Goenka, that this had a
3 threat of litigation. Was that your intent when you wrote
4 this?

5 A Not at all. The last thing I wanted to do was to be
6 sitting in this seat right now. That's why I had the
7 conversation that I had with the people that I had. That's
8 why I sent this email. And that we were unhappy with the way
9 that things rolled out and the way that they handled the
10 situation. That's when I decided to contact you.

11 Q And tell me what the intent of this -- what are you
12 trying to tell the company?

13 A Obviously lose my job, no. The intent of this was simply
14 to just to put them on notice that I wanted them to know that
15 there was lots of good people leaving this company. I wanted
16 them to know that the retention rate that we had was awful.
17 There's such a high turnover rate and the new faces -- people
18 that were learning a brand new software that they're
19 unfamiliar with, there's an obvious reason why the program was
20 failing, why we lost the contract.

21 Things weren't working right because they were running so
22 ineffectively.

23 Q What did you want them to do?

24 A Change. I wanted them to change. I wanted them to kind
25 of pay attention and actually listen to us which they never

1 took any information in.

2 Q Okay, flip to the next page. Do you see where it says,
3 "in conclusion?"

4 A Yes.

5 Q Please read that paragraph for me.

6 A "In conclusion, I'm not looking to prove a point or cause
7 massive uproar frivolous money seeking individuals who file
8 such claims are no better than the company who sees their
9 employees as replaceable.

10 "I only want to right -- I only want to right what I feel
11 is wrong with corporate America. To quote Bob Dillon, times
12 they are changing. I'll be in Houston through Friday. Fine if
13 you'd like to chat. Good night."

14 And then (indiscernible).

15 Q Okay, so let's recap a couple things. You've been
16 complaining about -- you testified that you've been
17 complaining about FLSA for how many months?

18 A At this point it would have been -- this is in July when
19 this email was sent -- so it would have been -- January in
20 training, so it would have been about -- seven months. Excuse
21 me.

22 Q Okay. And did they finally do anything about it?

23 A Yeah, roughly a month later we received a letter saying
24 that we were going to be reclassified.

25 Q Okay. Lets look at that.

1 MR. SLOBIN: Plaintiff's Exhibit 36, Your Honor.

2 THE COURT: Thank you.

3 BY MR. SLOBIN:

4 Q All right, what is this document?

5 A That's was the September 1st dated document saying that
6 we were going to be reclassified and how they were going to
7 pay us our back-pay, overtime.

8 So for the -- how many hours was it -- 805 hours of
9 overtime, I was paid \$8,924.

10 Q Okay. And did you think that was an accurate
11 calculation?

12 A I think it's accurate if you use the fluctuating work
13 week method, but it's not accurate to what I believe we should
14 have been paid.

15 Q Let's take a look at Exhibit 37 -- Plaintiff's Exhibit
16 37. What is Plaintiff's Exhibit 37?

17 A It's a letter from Andy Diaz -- who was the HR Director
18 at the time -- saying that our status according to the
19 official -- just kind of reiterates the email that was sent.

20 Q Do you know when you received this?

21 A I believe it was right around the same time. I'm not,
22 I'm not -- I can't really recall to be honest.

23 (Pause in the proceeding.)

24 Q You were in the room yesterday when Mr. Goenka was
25 testifying. Do you recall that?

1 A Yes.

2 Q And there was some questions about Exhibit -- Plaintiff's
3 Exhibit 41 and your complaint and then the companies policies
4 and procedures. Do you recall that?

5 A Yeah, I believe so.

6 Q Okay, and I believe the testimony was -- I'm not trying
7 to misstate anything -- was that you didn't follow the
8 company's policy and procedures in making that complaint. Do
9 you recall that?

10 A Yes, I do.

11 Q Okay. Tell me why you didn't follow the company's
12 policies -- let me finish the question. Tell me why you
13 didn't follow the company's policies and procedures when
14 giving that complaint.

15 A We didn't have an employee handbook. We had no policies.
16 We had no procedures. In fact, when my grandfather later
17 passed -- about a month later which is in August of 2015 -- I
18 didn't even know we had bereavement. I asked my manager for
19 it. He didn't even know we had bereavement. He said that we
20 didn't. I had to use my sick days.

21 A month later we get a policy and procedures handbook
22 published and it states any full time employee should get
23 three days of bereavement per year.

24 I mean that's -- it didn't get published until September.
25 We had no company policies. We grew too fast, too quickly as

1 they -- as I mentioned and we didn't have a lot of things in
2 place that should -- that a company should have had in place
3 prior to early on.

4 Q All right, so you threw out a whole bunch of stuff at me,
5 so let me kind of break it down, again.

6 Let's talk about this bereavement leave.

7 A Yes.

8 Q Okay, so I'm sorry for the loss. But tell me, you took
9 some time off?

10 A Yes, I traveled to New York. I was supposed to be doing
11 site training in New York. I found out as I touched down that
12 my grandfather had passed about a month after -- or
13 whatever -- approximately a month in August when he passed.

14 And I called my manager as to, you know, get a flight
15 back home and he said he was going to book me a flight. I was
16 on performance improvement plan at this time that said that if
17 I booked my flight or changed any more travel that I was going
18 to be fired. So I had to sit there in a hotel for two days to
19 kind of get over what it was I actually ended up training
20 Thursday and Friday.

21 Q So you didn't make it to the funeral?

22 A The funeral was later on and that's actually when they
23 did give me a single day of bereavement that day. But that
24 was like six months later. It was more of a -- it wasn't
25 actually a funeral.

1 Q Was the -- was the leave counted as any specific type of
2 time?

3 MR. MACDOWALL: Objection, Your Honor. Let us go
4 on. I'm not sure what the relevance of this entire line of
5 questioning is.

6 MR. SLOBIN: Your Honor, the relevance is policies.
7 They seem to make this a big issue yesterday about following
8 policies.

9 THE COURT: I think you established that the policy
10 manual was not given to them until after this time period. I
11 don't think we need to go into --

12 MR. SLOBIN: That's fine, Your Honor.

13 THE COURT: -- too much more of this. Just wrap up
14 this line.

15 MR. SLOBIN: Okay, just to get an answer to that
16 question. Do you mind reading back the question?

17 THE COURT: This is an electronic record.

18 MR. SLOBIN: Oh, sorry. I'll start again.

19 BY MR. SLOBIN:

20 Q Was your time that you said you took off, was that
21 counted as any specific type of time?

22 A It was -- that was sick days. I had to take sick days.

23 Q Okay. All right. So were you paid for that time?

24 A Yes, I was paid for that time using --

25 Q Sick days?

1 A Yes, sick days.

2 Q All right. I'll move on. And I just want to be 100
3 percent clear and I think you've got it. So when do you
4 believe -- did you eventually receive an employment manual?

5 A Yes, I was in Fayetteville. That would have been in
6 September.

7 Q Okay, so that was two months after you complained?

8 A Yes, correct.

9 (Pause in the proceeding.)

10 MR. SLOBIN: Your Honor, I'll pass the witness.

11 THE COURT: All right. Mr. MacDowall, do you need
12 the overhead to be connected to your computer?

13 MR. MACDOWALL: Yes, Your Honor, although I think
14 I'm going to use the Elmo first.

15 THE COURT: All right.

16 (Pause in the proceeding.)

17 CROSS-EXAMINATION OF CHRISTOPHER MICHAEL KEHN

18 BY MR. MACDOWALL:

19 Q Good morning, Mr. Kehn.

20 A Good morning.

21 Q You're a college graduate; is that right?

22 A That's correct.

23 Q You graduated from Case Western University; is that true?

24 A Case Western University, that's correct.

25 Q That's in Cleveland?

1 A That is.

2 Q You graduated there in 2008 with a degree in Political
3 Science; did you not?

4 A I did.

5 Q Then you graduated from Ohio Northern University School
6 of law; is that true?

7 A College of law if you want to be correct, but yes.

8 Q And that was in 2012?

9 A Yes, it was.

10 Q So you obtained your J.D.?

11 A Yes.

12 Q Is that right? And then you took the Ohio bar
13 examination; is that right?

14 A That's right.

15 Q And you passed that?

16 A Yes.

17 Q So you're a licensed attorney in Ohio. Is that accurate?

18 A That's correct.

19 Q And you practiced law for approximately two years and you
20 testified to earlier; is that right?

21 A That is correct.

22 Q And then in the summer of 2014, you applied for a job
23 with Shipcom as a trainer; is that accurate?

24 A That is accurate.

25 Q You left the practice of law?

1 A Yes.

2 Q And Shipcom made you an offer of employment. I believe
3 you reviewed that during your direct examination; is that
4 right?

5 A Yes.

6 Q That offer indicated that you'd be employed as a trainer
7 by Shipcom; is that right?

8 A That's correct.

9 Q And you were offered an annual salary of \$65,000 for that
10 position; is that right?

11 A That is right.

12 Q And you reviewed that offer, didn't you?

13 A Yes.

14 Q As a lawyer you knew that it was important to review that
15 offer; isn't that right?

16 A Yes, I do.

17 Q And you accepted that offer by signing it; didn't you
18 not -- did you not?

19 A Yes.

20 Q Okay. So you knew when you were going into this
21 employment you were going to be paid \$65,000 a year for all
22 services to be performed for the company; isn't that accurate?

23 A It's accurate to a certain extent.

24 Q To the extent that that's what the document said that you
25 signed; isn't that right?

1 A That is correct.

2 Q Okay. Now we've heard testimony that you just gave a few
3 moments ago about your complaint that you made on July 8th of
4 2015 regarding your belief that you were misclassified as an
5 exempt; is that right?

6 A That's right.

7 Q And that's the first time that you ever complained to
8 management about that issue; isn't that accurate?

9 A No, it's not.

10 Q Do you remember giving a deposition in this case,
11 Mr. Kehn?

12 A I believe so.

13 Q I was at the deposition asking you questions; is that
14 right?

15 A Uh-huh.

16 Q And we were at your attorney's office; is that true?

17 A Yes.

18 Q Mr. Sinkule, your attorney, was there with you?

19 A Uh-huh.

20 Q And Court Reporter was taking down your answers to all
21 the questions that I asked?

22 A Yes.

23 Q And you were sworn in to tell the truth at the
24 deposition; is that right?

25 A Yep.

1 Q And that deposition was videotaped; was it not?

2 A It was videotaped.

3 MR. MACDOWALL: Your Honor, at this time I'd like to
4 show a clip of that deposition to the jury. Can I publish
5 that?

6 THE COURT: Is this going to be a clip of the
7 question that you just asked -- the previous question that he
8 responded now?

9 MR. MACDOWALL: Yes, Your Honor.

10 THE COURT: All right, proceed.

11 (Pause in the proceeding.)

12 MR. MACDOWALL: I apologize, Your Honor, for the
13 delay here.

14 (Pause in the proceeding.)

15 (A video recording was played from 10:41 a.m. to
16 10:45 a.m. for the Court.)

17 BY MR. MACDOWALL:

18 Q So, Mr. Kehn, the first time that you brought to
19 management's attention any issue with respect to your belief
20 you were misclassified was in that email that we've already
21 seen; is that right?

22 A That is incorrect.

23 Q So were you telling the truth during that deposition?

24 A Yes, I was. That was the first time written. I gave
25 notice -- I spoke about it a significant amount of times in

1 person to multiple people within management. And that's what
2 I was referencing there that it was the first time notice
3 giving written notice.

4 Q And who of the folks -- you talked about all the folks
5 during direct examination who you allegedly informed about
6 this issue in March and April in 2015; is that right?

7 A That is right.

8 Q Okay. Who of those were in management?

9 A My manager, Ed Price, the Rahaul Jani, he's management.
10 He's site lead. Rahul Gupta, he's a VP, so he's management
11 obviously. There was also the site lead in Fayetteville.
12 She's management.

13 Q Okay. Did you know that there was a -- you mentioned
14 earlier you knew Andy Diaz was the Director of Human
15 Resources; is that right?

16 A I don't know when he came on, but yeah he at some point
17 was.

18 Q You don't recall him being hired by the company in April
19 of 2015?

20 A I remember a conversation with Malek saying that he had
21 no experience, yes, around that time.

22 Q Did you ever take this alleged concern of yours to
23 Mr. Diaz's attention as Human Resources person?

24 A No, I took it to Malek's attention. He's human
25 resources.

1 Q Now in response to this email, you were later
2 reclassified -- excuse me. After you filed this or after you
3 sent this email in July of 2015, you were reclassified by the
4 company as non-exempt from overtime; isn't that accurate?

5 A That's accurate.

6 Q You started to receive overtime from the company; isn't
7 that true?

8 A No, we were not allowed to work overtime, but yeah.

9 Q But when you would, you would receive overtime; is that
10 right?

11 A No, in fact they still have a few hours that weren't paid
12 for.

13 Q The company paid you for the time that you did work
14 overtime for the two years prior to your reclassification; is
15 that accurate?

16 A Yes.

17 Q And they paid you \$8,924.20; did they not?

18 A They did for 800 and some hours of overtime.

19 MR. SLOBIN: Objection, relevance, Your Honor.

20 MR. MACDOWALL: Your Honor, at very best, they've
21 opened the door. They want to talk about damages issues
22 without allowing us to talk about those as well. The witness
23 has been questioned about the document where he was
24 reclassified.

25 THE COURT: Well, do you have a point?

1 MR. MACDOWALL: That's it, Your Honor. Just that he
2 was paid.

3 THE COURT: All right, let's move on.

4 BY MR. MACDOWALL:

5 Q Mr. Kehn, let's talk a little bit about that complaint
6 for a moment.

7 A Okay.

8 Q This is Plaintiff's Exhibit Number 41; is it not?

9 A Yes, it is.

10 Q And it's a copy of that complaint that you sent on
11 July 8th of 2015?

12 A Yep.

13 Q And the top of this email was sent to a whole bunch of
14 folks classified as Vice President of the company; is that
15 accurate?

16 A Accurate enough, yeah.

17 Q And at the bottom of this email, you attached a copy of
18 the email that you sent to JP previously; is that right?

19 A That is right.

20 Q The portion we're showing to the jury now starts with JP
21 and it says, "fair warning" and it goes on that's the portion
22 that you sent to JP; is that accurate?

23 A Yes, that the email I sent to JP.

24 Q And you start off in this paragraph, you state, "fair
25 warning this is an apology and a rant all in one, so please do

1 not let the rant supercede the fact I'm admitting that I
2 handled the situation poorly." Did I read that accurately?

3 A You did read it accurately.

4 Q And the situation you're referring to is changing your
5 flight without informing the company and going through the
6 proper procedures for doing so; is that right?

7 A What procedures? We didn't have procedures.

8 Q You are -- you would agree with me that the situation
9 we're talking about is your changing your flight; is that
10 right?

11 A That's correct.

12 Q Okay. And you handled that situation poorly; is that
13 accurate?

14 A Poorly in sense if I was a manager, yeah, I would be
15 upset for the way I handled the situation.

16 Q And that's the situation that you were written up for; is
17 that right?

18 A I believe so.

19 Q You go on and on in this and we don't have to go through
20 all of it, the jury can certainly read it, but here on the
21 next page in the fourth full paragraph, it starts with,
22 "Additionally a fair amount", do you see that?

23 A Yes.

24 Q You write here, "Additionally a fair amount of my work
25 week is spent performing or providing additional aid for tasks

1 that would ordinarily go to other departments such as travel
2 coordinators, tech writers, data team, blueprint, install
3 technicians and in some instances IT." Did I read that
4 accurately?

5 A Correct.

6 Q So you take on other job responsibilities that weren't
7 necessarily assigned to trainers during your employment; is
8 that what you're saying?

9 A I'm saying I did what I had to do for the team. That's
10 what I did. That wasn't our main job duty. Our main job duty
11 to teach.

12 Q Let's go to the last page of this email that you wrote
13 and the last full paragraph or excuse me. The paragraph that
14 read "if plans go accordingly." Do you see that?

15 A Yes.

16 Q Let's start with the fourth line where it reads, "I also
17 feel." Do you see that line?

18 A I also feel. Yeah.

19 Q Okay. It says, "I also feel I can provide solutions you
20 might have not thought of that could address the pain points
21 within the program. Take this all for whatever it is worth to
22 you. I've lost sleep thinking about all of this so I needed
23 to get it on paper and send something out and this was the end
24 result." Did I read that accurately?

25 A Yes.

1 Q What you're talking about there is wanting to sit down
2 with members of the company -- in particular J.P. Renaud,
3 right?

4 A Yes.

5 Q And talk to them about some ideas you had for improving
6 or improving the processes at Shipcom, right?

7 A Yeah, we were the boots on the ground. We had a lot of
8 information I think he would have seen was useful.

9 Q I believe you testified in direct examination that you
10 worked at between 35 and 50 hospitals during the course of
11 your employment with Shipcom. Is that accurate?

12 A That's accurate.

13 Q And would you agree that when working at these hospitals,
14 you were training folks on the CATAMARAN software system that
15 was being implemented at those hospitals?

16 A We trained on CATAMARAN, correct.

17 Q And it's the CATAMARAN software that we talked about
18 extensively during the course of this trial, right?

19 A Yes.

20 Q And the purpose of CATAMARAN was to improve the
21 hospital's efficiencies with respect to their management of
22 their inventory supplies. Is that accurate?

23 A Yes. Did it though?

24 Q Excuse me?

25 A I said, did it though? That was the point of the

1 program, but it didn't necessarily make it. If anything, it
2 was more inefficient.

3 Q Okay, that might be your belief, sir, but the purpose of
4 the software was to improve the VA hospital's efficiency;
5 isn't that right?

6 A That's correct.

7 Q And you would agree that the reason the supplies needed
8 to be monitored by the VA was that it was spending a
9 substantial amount of money on supplies. Is that accurate?

10 A Yes.

11 Q And some of those supplies were being wasted or
12 mishandled by their old supply change system; isn't that true?

13 A It was true for most places. It was an almost impossible
14 problem to fix.

15 Q Okay. But my question is a little bit different.

16 A Okay.

17 Q When the VA had the old system, they were mishandling
18 funds in some way that was causing waste; is that right?

19 A Yes.

20 Q And the purpose of CATAMARAN Solution was to improve that
21 so there wasn't as much waste in these VA hospitals; is that
22 true?

23 A Yes.

24 Q And your job as a trainer was to explain to the VA
25 hospital staff how the system worked to do that job, right?

1 A It was yeah, to train them on it.

2 Q And we talked about all the different ways that the
3 software system worked to monitor the supplies in order -- so
4 that they would know what supplies were in the hospital; is
5 that right?

6 A Yes.

7 Q And they would know how many supplies they should be
8 reordering at a particular time; is that true?

9 A Yeah and assist them.

10 Q And you don't only train them on the software and how
11 that worked, but you also trained them on the hardware pieces
12 that were used to implement the software or use the software;
13 is that right?

14 A Yeah.

15 Q Those include those kiosks that we talked about
16 throughout the course of this trial where staff could go up
17 and order supplies if necessary?

18 A Uh-huh.

19 Q And those handheld scanners, for example, and the
20 overhead displays all those were part of the solution; isn't
21 that true?

22 A That is true.

23 Q And that solution that we're talking about, you would
24 agree, was this redesign of the hospital system or the
25 hospital inventory system; is that right?

1 A Yeah. Yes, excuse me.

2 Q And as part of implementing this new system or this new
3 solution, you also had to explain to the VA personnel how
4 supply chain -- some supply chain concepts that would be
5 applied; isn't that true?

6 A We read from a slide deck that these were created with
7 the theories behind chain -- supply chain management, yes.

8 Q So you had a whole training program on supply chain
9 concepts that was useful to the VA in understanding how the
10 system was going to work?

11 A We had a module talking about supply chain theories and
12 concepts. Yes, a module.

13 Q And you trained that particular module to the folks at
14 the hospital?

15 A Yes.

16 Q And it was important -- that was important because it
17 helped the hospital staff understand what the solution was and
18 why it was beneficial to them; isn't that true?

19 A True.

20 Q Now you would agree with me that you, yourself, as a
21 trainer had to have sufficient understanding of the solution
22 in order to train others on it; wouldn't you?

23 A Yes.

24 Q And to obtain that understanding, you would study, for
25 example, work flows of how these different processes worked in

1 the hospital or should work under the new system; isn't that
2 true?

3 A We didn't study anything. We then -- there's just slides
4 that we created that we learned, taught, read. That was it.

5 Q How would you learn if you weren't studying them, sir?

6 A Sorry, excuse me. I didn't mean to say learn. I guess
7 it was just reading them and learning the concept.

8 Q You used the term again there. You learned by reviewing
9 the materials?

10 A Yes, that's how we did it is we reviewed the materials.
11 We didn't study in-depth supply chain management. I had no
12 background in supply chain management. I had no background in
13 logistics. We would just -- we learned all of us had
14 different backgrounds and varying backgrounds.

15 Q And because you didn't have any background in supply
16 chain logistics, you had to study the materials that were
17 provided to you so you could teach someone about supply chain
18 concepts; isn't that accurate?

19 A Accurate enough.

20 Q When there weren't prepared work flow solutions already
21 given to you by the -- by Shipcom to sort of understand how
22 things worked, you would use trial and error technics in the
23 testing software to figure out how the system worked; isn't
24 that true?

25 A Shared rarely, yes.

1 Q And you did that also so you could be able to communicate
2 with the VA hospital staff your understanding of how it works,
3 so that they would understand?

4 A It would be our understanding of how the proof of concept
5 works because the proof of concept wasn't necessarily the
6 exact same thing as what we were -- that was rolling out on
7 site.

8 Q But -- let me re-ask my question. The reason you were
9 studying and doing this trial and error technics and reviewing
10 the materials that you were going to be training is so that
11 you could explain it in a way that made sense to the people
12 you were talking to?

13 A Yeah.

14 Q And during the course of your employment, the CATAMARAN
15 system actually changed over time; isn't that true?

16 A Yes.

17 Q As the development team at Shipcom worked to improve its
18 functionality to help the VA hospital, right?

19 A Yes.

20 Q And you had to understand how all these changes that were
21 happening in the software actually worked in practice, didn't
22 you?

23 A Yes, we did.

24 Q Because you were going to be explaining to the VA
25 hospital staff all these changes that were happening to -- or

1 all these new developments to the software; isn't that right?

2 A A lot of the times it was because we had to go back and
3 train them on the software that they were actually rolling out
4 on that facility because when we went on site prior to
5 go-live, we were training them on something that was entirely
6 irrelevant from what they got.

7 So, yes, a lot of times we had to go back and train them
8 on the new software because what they were initially trained
9 on was no longer applicable.

10 Q We talked about how training happened in the
11 pre-implementation phase and the go-live phase? You talked
12 about that in direct examination, right?

13 A Yes.

14 Q And the pre-implementation phase was more the classroom
15 based discussions that we talked about?

16 A Yes.

17 Q Okay. And in those classroom based settings, you were
18 testing folks to make sure that they understood the concepts
19 that were being delivered?

20 A We weren't allowed to test the VA. There was no testing
21 done whatsoever.

22 Q Maybe I'm using the wrong term. You would make
23 sure -- you would -- questions and answers basically with the
24 folks who were there trying to learn to make sure they were
25 understanding, right?

1 A Correct.

2 Q And in the post-implementation phase you were shadowing
3 these folks walking around with them making sure they were
4 doing things correctly; is that accurate?

5 A That's accurate.

6 Q And in those settings there wasn't a PowerPoint slide
7 that you were presenting to them. You were actually walking
8 with them and talking with them, conversing that sort of
9 thing?

10 A We had put -- we had put reference guides which were
11 essentially the slides printed out that we used to do these
12 walk-throughs. So yes.

13 Q So you were referring to those reference guides every
14 time you talked to someone about something?

15 A If we needed to, yes.

16 Q Okay. But if you -- sometimes you didn't need to because
17 you had an understanding of the system and how it worked,
18 right?

19 A Yep.

20 Q You would agree with me that you learned from your
21 experiences as a trainer, wouldn't you?

22 A Yes.

23 Q You learned ways to improve your training to become
24 better at it?

25 A Yes.

1 Q It was a skill that you were developing?

2 A Yes.

3 Q And based on your experiences, you would provide feedback
4 to Shipcom about ways that the whole training program could be
5 improved; isn't that accurate?

6 A No, it's no accurate.

7 Q Never gave ideas about how things could be improved at
8 Shipcom?

9 A Very rarely. I think as Chad stated, it became very
10 clear that they weren't interested in what our opinion was so
11 we kind stopped after a point.

12 Q So was it rarely or never?

13 A It was rarely, rarely. Excuse me, it was never, but it
14 was rarely.

15 (Pause in the proceeding.)

16 Q Mr. Kehn, if you could turn to Defendant's Exhibit No. 39
17 in your notebook. Let's start with 47, actually. I'm going
18 to do it differently.

19 Let's start with 47, Mr. Kehn. Nope it is 39, I'm sorry.
20 Different number. Thirty-nine is the right one.

21 (Pause in the proceeding.)

22 Q You see it there in your book? You can see on the screen
23 here as well?

24 A Yes, sir.

25 Q Okay. And this document is a series of emails between

1 Justin Novick and folks at Shipcom; is it not?

2 A Yes, it is.

3 Q And you're copied on this email; is that right?

4 A That is correct.

5 Q Let's start at page 918. Do you see those numbers at the
6 bottom, 918 there?

7 A Uh-huh.

8 Q That's an email, it looks like, from Justin Novick to
9 Hiten Patel on February 2nd, 2015; is that right?

10 A Yes.

11 Q And who is Hiten Patel?

12 A He's the president or something like that. Senior vice
13 president, it states right there.

14 Q Senior vice president of Shipcom, right?

15 A Correct.

16 Q And Jean-Paul Renaud is copied on this email; is that
17 right?

18 A Yes.

19 Q Who is Mr. Renaud?

20 A Mr. Renaud is the -- he's kind of in charge of the
21 kill-you program which is the program that we print out for
22 the VA.

23 Q So Mr. Renaud is Mr. Patel's boss; is that accurate?

24 A I don't know if that's accurate or not. I'm not sure
25 how -- we didn't have any kind of document stating what our

1 corporate ladder looked like so I wasn't sure.

2 Q Okay. He was also up in management, right?

3 A He's upper management, yes.

4 Q Starts here, "The following information is meant for
5 internal use only and reflects some of the feedback from
6 previously trained sites as well as some personal opinions of
7 mine." Did I read that accurately?

8 A Yes.

9 Q The next sentence says, "Kehn, please follow-up with any
10 thoughts on this."

11 A Yes.

12 Q "Any of your thoughts on this." Did I read that
13 accurately?

14 A Yes.

15 Q And Kehn is referencing you there, right?

16 A That is correct.

17 Q Then in the next paragraph, start there. It says, "We
18 need to be firm in our agendas and schedules. The level based
19 training is written for a reason in that it will provide for
20 conceptual comprehension in a tear-driven system." Did I read
21 that accurately?

22 A Yes.

23 Q And you were, in fact, having problems with some of the
24 VA hospitals not abiding by the training schedules that you
25 guys had established for some of the folks to be trained; is

1 that right?

2 A Yeah, it's --

3 Q That was a problem for training. People weren't showing
4 up on time; is that accurate?

5 A That is accurate.

6 Q So here Mr. Novick appears to be suggesting that you be
7 firm on the agendas?

8 A Yes.

9 Q Would you agree with that?

10 A Yes.

11 Q And you and Mr. Novick actually discussed that being a
12 problem before he wrote this email; wouldn't you agree with
13 that?

14 A Yeah, over a beer.

15 Q Let's go to the bottom paragraph there. It says:
16 "Next, we need to pro-actively address the fact that
17 we're not training in a site specific live environment.
18 There is a training server for task driven learning
19 modules and we will offer open house for sandbox
20 purposes, but will not be training the end users on the
21 job."

22 Did I read that accurately?

23 A Yes.

24 Q And what he's referring there to, correct me if I'm
25 wrong, is the fact that you were training before Shipcom was

1 actually or excuse me, CATAMARAN was a live software at the
2 hospital. It was just being implemented at that point; is that
3 right?

4 A Correct.

5 Q And you're trying to train folks on a software system
6 that's not actually live in the hospital at that point; is
7 that right?

8 A That's right.

9 Q And so it was creating some issues for you in training;
10 is that what he's saying?

11 A Yes, that's what he's saying.

12 Q And would you agree with that assessment?

13 A I mean, the issue here was -- it's Clarksburg specific.
14 The FCO there did not want that death PowerPoint and he'd
15 heard through the grapevine that that's what this was going to
16 be.

17 So what it is, is me and Justin had to sit down and try
18 to figure out an alternative. So yes, we were forced to based
19 on the circumstances.

20 Q Okay. I think we'll get to that in a moment, but I guess
21 my question was just you were having issues with training
22 folks in an environment where Shipcom was not live? Is that
23 the point that he's making?

24 A I believe so. I would have to re-read this entire thing
25 and take some time if I want to be sure -- be certain.

1 Q Well just that paragraph that I just read. Would you
2 like to take a moment to re-read that?

3 A Please.

4 (Pause in the proceeding.)

5 A Okay.

6 Q So the portion that we just read is talking about the
7 problems you-all were running into with training folks in this
8 environment before CATAMARAN was actually operational in the
9 facility; isn't that right?

10 A Correct.

11 Q Okay. It then goes on to say, "Prior to go-live, our
12 goal in training per Brett Hayden's team pass document is" go
13 to the next page here. "Task. Ensure the VA MC logistics and
14 clinical staff receive personalized in-depth training to best
15 prepare logisticians for conversion to CATAMARAN software and
16 POU Inventory Management system. Provide classroom, hands on
17 and on-the-job training as well as help to analyze and
18 implement work flow solutions for targeted VAMC staff
19 utilizing CATAMARAN processes." Did I read that accurately?

20 A Yeah, I believe that's what a site lead had in mind for
21 the training team, but it was never actually produced to the
22 group. This was just something that was between myself and
23 Novick that we took on our own.

24 Q What did you take on your own? What are you saying?

25 A What I mean by that is that Novick took on the fact that

1 we had to try to revamp -- make something work, but we didn't
2 have any -- first of all we didn't have a manager at the time,
3 so what we had to do was just try to make sure that this FCO
4 was happy.

5 It was never implemented after. It was never talked
6 again after. It was just this one single instance.

7 Q Okay. So let me make sure I understand your testimony.
8 What you're talking about is the fact that you and Mr. Novick
9 had to come up with a way to satisfy the customer because
10 there wasn't a manager coming up with a solution on your
11 behalf. Is that what you're saying?

12 A No, it was because we had to make due with what we had.

13 Q And you made due with what you had to the best of your
14 ability to make the client happy; is that right?

15 A No, because we still ended up training on PowerPoint
16 slides. We had to do death by PowerPoint which is why he was
17 upset in the first place.

18 Q Okay, but you were trying to come up with a solution to
19 that issue. Is that what I'm understanding?

20 A Yes, over a beer.

21 Q Okay. In the next paragraph it says:

22 "Kehn and I have developed a training model that allows
23 for presenting central office approved training material
24 developed jointly between Shipcom, training and technical
25 writing teams and central office project management along

1 with allowing the end users to intensively function
2 within the training server and POC demo environments."

3 Did I read that accurately?

4 A Yes.

5 Q So you'd agree with me that you and Mr. Novick developed
6 a training model, right?

7 A There's nothing that we really developed. There's
8 nothing developed.

9 Q So is he lying when he says Kehn and I have developed a
10 training model?

11 A It's PowerPoint slides. That's what we're talking about
12 here. We didn't develop anything. We didn't create anything.
13 We took PowerPoint slides and put them together.

14 Q I guess that wasn't my question.

15 A Okay.

16 Q My question was is Mr. Novick being accurate when he
17 says, "Kehn and I have developed a training model?"

18 MR. SLOBIN: Objection, vague, Your Honor. What
19 Mr. Novick talk about Mr. Novick's words.

20 MR. MACDOWALL: I believe it's talking about
21 Mr. Kehn and Novick developing this, Your Honor. So I'm not
22 sure how I can be more clear than that.

23 MR. SLOBIN: Your Honor, --

24 THE COURT: Rephrase. Rephrase it --

25 MR. MACDOWALL: Yes, Your Honor.

1 THE COURT: -- the question.

2 BY MR. MACDOWALL:

3 Q Mr. Kehn is it or is it not accurate that you and
4 Mr. Novick developed a training model?

5 A I won't say we developed anything, no. It's not
6 accurate.

7 Q Okay. Do you remember providing a deposition in this
8 case? You said that earlier you did.

9 A Yeah and I think I said something along the lines of
10 Novick putting something together.

11 MR. MACDOWALL: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes.

14 BY MR. MACDOWALL:

15 Q Mr. Kehn, I'm handing you sealed copies of the deposition
16 transcript we received from the Court Reporter. If you could,
17 turn to page 75. Line number six. If you'll read along
18 silent with me.

19 It says:

20 "Q What was the training model that you and Mr. Novick
21 developed?

22 "A I love Justin to death. He has a tendency to
23 include me in everything. He did try to put together a
24 training model that would help us to train the VA staff.
25 I think it was actually referred to once as chiclets

1 because of the way it looked. Nothing was implemented.
2 Nothing was taken from it. This is one of those examples
3 I gave earlier about we would try to bring information to
4 the people above us and nothing ever came from it."

5 Let's jump down to line 20.

6 "Q When you do you recall developing the training model
7 with Mr. Novick?

8 "A Right about that time because I saw that line. Then
9 the -- then the early part or so many sites, I'm not
10 sure. Can you give me approx --

11 "Q Can you give me an approximate date?

12 "A A year, honestly I'm not sure.

13 "Q What year was it?

14 "A End of 2014, possibly beginning 2015. It was early
15 on. Justin stopped being employed with Shipcom in March
16 of 2015, so it had to be July, March."

17 Did I read that accurately?

18 A Yeah, that's accurate.

19 Q You designed this model to solve scheduling issues; did
20 you not?

21 A I did not design a model. I think it specifically states
22 that Novick tried to put something together to ease the pain
23 at one facility and that was it.

24 Q His model that was developed was designed to solve
25 scheduling issues; would you agree with that?

1 A Sure. Like I said I don't recall a whole lot about this
2 because it was never made a big deal. Nothing was ever taken
3 from it so I don't know specifically what it was that we were
4 even trying to focus on.

5 Q If you could, sir, please turn to page 76, line number
6 five. I want you to read along with me as I read it. Are you
7 there?

8 A Nope.

9 Q Okay, 76, line five. Are you there?

10 A Yes.

11 Q It says,

12 "Q And why did you decide to develop the training model
13 from Mr. Novick?

14 "A Trying to figure out some of the frustrations that
15 we had. Figure out what we can kind of herd and get rid
16 of some of that.

17 "Q What sort of things?

18 "A Scheduling was a huge issue. Getting the VA on
19 board with what we needed and what they were willing to
20 do was always a problem."

21 Did I read that accurately?

22 A Yes.

23 Q Let's look back at Defendant's Exhibit Number 39 if we
24 could. Go to the first page. And this is an email, again,
25 from Justin Novick to Hiten Patel; is that right?

1 A Yes.

2 Q And it's dated February 4th, 2015?

3 A Uh-huh.

4 Q The first -- let's read the first line here. It says,
5 "Attached please find two documents and one field of text in
6 the body of this message. Explanation as follows." And then
7 it has three bullet points.

8 First bullet reads, "Agenda. This is brand new. You-all
9 are the first to see it. Idea being that we can confirm all
10 classroom attendees ability to perform hands-on and functions
11 related to the central office approved PowerPoints. I would
12 like to edit this a bit still so please don't publish it until
13 you see fit.

14 "I'll be 100 percent complete on this by tonight or
15 tomorrow."

16 Did I read that accurately?

17 A Yes.

18 Q You recall being involved in the creation of this agenda,
19 don't you?

20 A I recall being cc'd on these emails or I remember being
21 cc'd on his emails.

22 Q Can you say that again? I'm sorry, I didn't hear your
23 answer.

24 A I remember being cc'd on these emails.

25 Q Okay. Do you remember being involved in the creation of

1 the agenda that he's talking about?

2 A Not exactly.

3 Q Okay. If you could, turn in your transcript, page 76.

4 Let's go down to line number 21. It says,

5 "Q If you could then, turn back to the first page, 916.

6 Do you recall receiving or being copied on this email

7 from Mr. Novick?

8 "A I'm sure I was.

9 "Q No reason to dispute that you received this email?

10 "A No.

11 "Q In the first bullet point that's put into this

12 email, Mr. Novick is describing this agenda that he calls

13 brand new. Do you see that?

14 "A Uh-huh.

15 "Q Do you recall reviewing that agenda?

16 "A Yes, I think so.

17 "Q Do you recall being involved with him in developing

18 that agenda?

19 "A Yeah, he bounced a bunch of ideas off me regarding

20 it."

21 Did I read that accurately?

22 A Yes, you did.

23 Q The ideas that Mr. Novick was bouncing off you, including

24 this agenda issue, was designed to streamline the training

25 process. Would you agree with that?

1 A It was something that he took up on his own that he
2 wanted to do, correct.

3 Q But you were involved in this bouncing of ideas. Would
4 you agree with that?

5 A Yes, absolutely.

6 Q It was designed to make the training system more precise.
7 Would you agree with that?

8 A That was the attempt.

9 Q Let's go back this exhibit here. Defendant's Exhibit 39
10 and look at the next bullet point. It says, "Metrics." Do
11 you see that?

12 A Yes.

13 Q It says, "Metrics. This was a task assigned to us by
14 Brett Hayden as we left Coatesville. This document in it's
15 current form reflects what I observed while training one of
16 the item managers in Coatesville. I want this to apply to the
17 agenda."

18 Did I read that accurately?

19 A Yes, he wants it to apply to the agenda. Yes, you did.

20 Q And you recall these metrics, don't you?

21 A I'm not entirely sure about what this entire document
22 was, to be honest. And I think I did state that clearly
23 within the deposition, too. I'm not entirely sure what this
24 whole agenda is.

25 Q Just to make sure. Go to the attachments to this

1 document. Let's go to page 926 and 927 which are the last two
2 pages in this Exhibit. See that there, 926 -- the one
3 referred to in your booklet? Do you recognize this document?

4 A Yes.

5 Q Okay. And again, let's turn to 927 just to make sure.
6 This is the rest of it. See that?

7 A Yes.

8 Q Okay. This is the metrics that's being referred to in
9 the email that we're talking about, right?

10 A It's a list of modules, correct.

11 Q Okay. It's called metrics; is that accurate?

12 A It's called metrics, yes.

13 Q And these metrics reflect what you observed at
14 Coatesville?

15 A It just looks like a list.

16 Q Okay. Did it reflect what you did at Coatesville?

17 A Yes, the reflection to the modules we train on.

18 Q And do you recall conversation with Brett Hayden after
19 Coatesville where he asked for you-all to come up with some
20 ideas about the frustrations you were experiencing at that
21 particular site?

22 A Yes.

23 Q And these metrics was one of the ideas you came up with
24 to address his concerns?

25 A How is it a switch to anything? It look like a list,

1 modules that we trained on?

2 Q I'm asking you the question, sir.

3 A Okay, sorry.

4 Q Did you come up with that in response to Mr. Hayden's
5 question of you to come up with something to address the
6 concerns?

7 A Yes.

8 Q And those metrics were designed to simplify the materials
9 that you understood. Is that accurate?

10 A Yes.

11 Q Now let's go to the final bullet point of Defendant's
12 Exhibit Number 39 in that email.

13 Final bullet point reads, "Superuser Agenda. This is
14 what Kehn and I came up with after push back from the FCLO at
15 Clarksburg due to his dislike of PowerPoint driven courses."

16 Did I read that accurately?

17 A Yes.

18 Q And the FCLO is what?

19 A He's the logistics for the VA hospital system.

20 Q Okay. Not a Shipcom employee. Someone who is for the
21 VA, right?

22 A Correct.

23 Q And this person had a dislike for a PowerPoint driven
24 courses at Clarksburg; is that accurate?

25 A That's accurate.

1 Q And the superuser agenda is something that you and
2 Mr. Novick developed in response to that; is that accurate?

3 A Yes, we had to, given the circumstances or our manager is
4 Don, he left and they waited six months before they hired a
5 new manager. So we didn't have anybody else.

6 Q And this new superuser agenda you were coming up with was
7 a way to try to rely on PowerPoint less; is that accurate?

8 A It was an attempt.

9 Q And you used that new approach when you presented at
10 Clarksburg, didn't you?

11 A We ended up still using the training PowerPoint slides.

12 Q But you used your new -- this new system to some degree;
13 isn't that accurate?

14 A What system did we use? I'm sorry, you're asking the
15 question differently.

16 Q And that's -- yes, the superuser agenda. Did you not use
17 that whenever you worked for them?

18 A Yes, we trained -- what I remember about Clarksburg is
19 that we trained very similar to how we always trained any
20 other facility. We ended up still having to use the slide
21 decks. I don't know what we necessarily added to it because
22 this is a while ago. I can't necessarily recall.

23 Q But you recall using this idea that you and Mr. Novick
24 came up with to try and reduce the amount of reliance you had
25 on PowerPoints. Even though you still had to use some, try to

1 reduce it in order to appease the client; isn't that accurate?

2 A One facility. And then after that it was right back to
3 normal, yes.

4 Q Let's look at Defendant's Number 40. This is a series of
5 emails between you and Mr. Novick; is that right?

6 A Yes it is.

7 Q And the bottom email is a copy -- has a copy and paste of
8 a conversation -- text messaging conversation basically
9 between Mr. Novick and someone else at the company; is that
10 right?

11 A I believe so.

12 Q Okay. It was a conversation between Mr. Novick or excuse
13 me, a series of messages that Mr. Novick sent to J.P. Renaud;
14 is that your understanding?

15 A I believe so.

16 Q Okay. And copied and paste that and put it into an email
17 to you; is that right?

18 A Yes.

19 Q And he's describing in this email, Mr. Novick is, an idea
20 for improving the training process; is that right?

21 A Yes.

22 Q And he wanted your response to it; is that accurate?

23 A Yes.

24 Q And you state here after reviewing it, "Dude, that sounds
25 like a -- it's Fing brilliant." Did I read that right?

1 A Yes.

2 Q So you thought that Mr. Novick had some sort of brilliant
3 idea for improving processes at Shipcom; is that accurate?

4 A Uh-huh.

5 Q And link -- this is a link chat conversation. Link is a
6 chat, sort of, messaging system you guys had at Shipcom for
7 communicating with one another; is that right?

8 A That's correct.

9 Q Mr. Novick had a lot of ideas for improving Shipcom's
10 processes, would you agree with that?

11 A I believe I call him an "idea man" in the deposition,
12 correct.

13 Q And he'd bounce a lot of those ideas off of you, right?

14 A Yeah. Yes.

15 Q Let's turn to Defendant's Exhibit Number 49.

16 THE COURT: The previous Exhibit is which?

17 MR. MACDOWALL: Forty, Your Honor.

18 THE COURT: Forty.

19 (Pause in the proceeding.)

20 BY MR. MACDOWALL:

21 Q Do you recognize this document, Mr. Kehn?

22 A Yes, I do.

23 Q It's a copy of your performance review that was filled
24 out by your manager, Ed Price; is that right?

25 A Yes.

1 Q And the review period on this document is from July of
2 2014 to December of 2015; is that accurate?

3 A That is accurate.

4 Q Let's look at box number two. Box number two is for the
5 item, "Posses skills and knowledge to perform the job
6 competently." Did I read that right?

7 A Yes.

8 Q It looks like Mr. Price rated you as proficient in that
9 category. Would you agree with that?

10 A Yes.

11 Q And he notes here, "Good knowledge of the CATAMARAN
12 system and how logistic staff use it. Good technical
13 knowledge about the CATAMARAN system. For example, weighted
14 bins, added racks/shelf/item, C-R-I-L, R-I-L-PO process." Is
15 that right?

16 A Yes.

17 Q And that C-R-I-L and the last part that's a procurement
18 process; is that accurate?

19 A Yes.

20 Q So he's saying you had good knowledge of all those
21 systems that CATAMARAN was using; is that right?

22 A Yes.

23 Q And you would agree with that assessment?

24 A Yes.

25 Q Let's look at box number five on the next page. Box

1 number five says, "Proficiency at improving work methods and
2 procedures as a means to a greater efficiency." Do I read
3 that right?

4 A Yes.

5 Q Here you're rated as efficient; is that right?

6 A Yes.

7 Q Look at box number 7. "Ability to work independently."
8 Mr. Price rated you as proficient. Is that accurate?

9 A That is accurate.

10 Q You'd agree with that assessment, wouldn't you?

11 A Sure.

12 Q Let's go to page 1040 of the document. The performance
13 summary section. And the first paragraph, "List all aspects
14 of employee's performance that contribute to his or her
15 effectiveness." Did I read that accurately?

16 A Yes, you did.

17 Q Here it says, "Chris is effect at post go-live
18 support-problem solving issues, elbow-to-elbow coaching on
19 procurement, DP/POU replenishment et cetera." Did I read that
20 accurately?

21 A Yes, you did.

22 Q And you would agree that you were effective at post
23 go-live support; is that right?

24 A Yes, I would.

25 Q And that's where the system is actually going live at the

1 hospital when you're having to train folks in a sort of a
2 one-on-one setting; is that right?

3 A Uh-huh.

4 Q And you would agree that you were effective at problem
5 solving issues? You would agree with that too?

6 A We had a help desk. They were problem solving group of
7 people.

8 Q Okay, but what about you? You would agree that you were
9 a problem solver, you were good at that, right?

10 A Yeah, I can't think of a single specific problem, though,
11 specifically.

12 Q Problem with the scheduling issues that we're talking
13 about earlier. You were coming up with ideas to try and solve
14 that, right?

15 A Justin, I believe, was coming with the ideas.

16 Q Okay, but you're describing yourself here or you would
17 agree with this assessment that you were good at problem
18 solving, right?

19 A Yes.

20 Q Okay. Let's look at Defendant's Exhibit Number 50.
21 Starting with the third page of the document, 1030. Do you
22 recognize that document, Mr. Kehn?

23 A Yes, I do.

24 Q It's a copy of your self evaluation performance review;
25 is that right?

1 A Yes.

2 Q And it's for the same period of time although it looks
3 like it's from July 2014 to January 2016, including an extra
4 month in the review; is that right?

5 A Yes.

6 Q Okay. Look at box number two, we talked about earlier.
7 You rated yourself as highly effective that possesses skills
8 and knowledge to perform the job competently; is that right?

9 A That is correct.

10 Q And you write here, "I have been with CATAMARAN since the
11 initial training documentation was created and took it upon
12 myself to understand the software since day one. I believe
13 this has paid off and resulted in gaining a very good
14 understanding of how the software works." Is that accurate?

15 A That's accurate.

16 Q And you took it upon yourself by jumping into the job
17 immediately and involving yourself in those training materials
18 that you needed to be able to teach others on, right?

19 A Correct.

20 Q Let's look at box number five on the next page here.
21 This is the one for proficiency and improving work methods and
22 procedures as a means towards greater efficiency. You rated
23 yourself as proficient; is that right?

24 A That is correct.

25 Q And you explain, "I should work on being more vocal about

1 my ideas to improve work methods and procedures. I have a
2 document devoted entirely to this, but have not had an
3 opportunity to sit down and discuss my thoughts with upper
4 management." Is that right?

5 A That is correct.

6 Q Let's look at box number seven down there. Ability to
7 work independently. Again, you rate yourself as highly
8 effective in this category; is this right?

9 A That is right.

10 Q It's actually higher than Mr. Price even rated you; is
11 that true?

12 A That's true.

13 Q And you explain, "This job requires an individual to work
14 efficiently and independently in order to survive." Is that
15 what you wrote?

16 A Yes, I was relating to travel and all the travel that was
17 involved, correct.

18 Q Okay. You didn't put that in there did you?

19 A No, I did not.

20 Q Okay. So the only independence that you exercised with
21 respect to your job was with respect to travel?

22 A No, that's not the only, but that's what the majority of
23 what that conversation -- what that statement was regarding is
24 travel because we were traveling so much and much was by
25 yourself. All of us coming from different states. That's

1 what I meant by independent.

2 Q And you spoke about the fact that you were training
3 either just with another trainer or by yourself; isn't that
4 right?

5 A Always with another trainer.

6 Q Okay. So you had to work independently with respect to
7 training folks; didn't you?

8 A Yes.

9 Q Okay. Let's look at box number eight. Ability to work
10 cooperatively with supervision or as part of a team. You rate
11 yourself as exceptional; is that right?

12 A Yes.

13 Q And you write here, "I may not be the most vocal
14 individual in the room, however I do listen attentively to
15 others when they speak or have ideas and I'm capable of having
16 a back-and-forth discussion and provide feedback to others who
17 come to me with ideas." Is that right?

18 A That's correct.

19 Q We already talked about how you had multiple
20 back-and-forths with Mr. Novick about ideas; is that true?

21 A That's true.

22 Q Let's look at box number 13. Box number 13 says,
23 "Identifies performance expectation, gives timely feedback,
24 and conducts formal performance appraisals." Is that right?

25 A Yes.

1 Q You rate yourself as proficient in that category; is that
2 right?

3 A Yes.

4 Q And then you note here, "I know what is expected of me in
5 both the training and go-live setting. I can accomplish my
6 task with very little over-sight if necessary." Is that
7 accurate?

8 A That's accurate.

9 Q It's also accurate that, that -- you could actually do
10 that, not just that you put it on this document, but could
11 actually do that in your job; is that right?

12 A Yes because what we did is go on site, rinse, wash and
13 repeat and a lot of times our manager wasn't even on site with
14 us. So it was -- that's what I mean by little oversight. We
15 didn't have a manager in the building with us, like, you know,
16 most typical jobs would have.

17 Q Mr. Kehn, if you could turn to document number
18 51 -- Defendant's 51 in your notebook. Do you recognize this
19 document, sir?

20 A Yes.

21 Q It's a copy of your LinkedIn profile; is that right?

22 A That's correct.

23 Q A little wide, we need to get in there as close as
24 possible.

25 All right, I'm going to read this first paragraph here.

1 It says, "I began my professional career as an attorney. In
2 2014 I made the decision to walk away from the legal field by
3 accepting a corporate trainer/implementation specialist
4 position with Shipcom Wireless. Specifically the contract I
5 was hired on to support was for the implementation of the
6 company's proprietary software into every major veteran's
7 affair medical facility nationwide." Did I read that right?

8 A Yeah -- yes.

9 Q The next paragraph reads, "While at Shipcom, I was able
10 to combine my technical legal background with my new found
11 understanding of healthcare operations -- well, operational
12 improvements in the healthcare field. Our team was
13 responsible for becoming subject matter experts on the
14 software." Did I read that accurately?

15 A Yes.

16 Q Okay. And all that's a truthful statement; isn't it?

17 A Yes.

18 Q Okay. Turn to the last page of the document. Here under
19 list of accomplishments you include a description for
20 CATAMARAN; is that right?

21 A I believe so.

22 Q I'm going to read this. It says, "Prior to a highly
23 visible software proof of concept presentation, our team
24 worked together with our technical writers to provide input in
25 offering and editing multiple highly detailed user manuals and

1 reference guides applicable to various roles in hospital
2 supply chain management including chief logistic officers,
3 item managers, supply technicians, materials handlers and
4 clinicians. This two-week project was immediately followed by
5 successful on-site demonstration training for the contract
6 approval committee." Did I read that accurately?

7 A That's correct.

8 Q And is that an accurate description of what you did?

9 A We sat in a room as we went over documents with the VA
10 site of the contract. This is the sales pitch. This is
11 LinkedIn. This is trying to get a job.

12 Q It's accurate that you were working with these folks who
13 helped these highly technical user manuals?

14 A That was our technical writers.

15 Q But you were in the room helping them do that because you
16 had expertise as a trainer to know how to communicate those
17 ideas; isn't that right?

18 A I was in the room -- this was right after I was hired, if
19 you notice, I think the date -- it was just me learning the
20 software at that point. I was in a room sitting there
21 listening to people talk about the software, yes.

22 Q Okay. So then is it accurate or inaccurate that you were
23 in there developing these user manuals?

24 A The team that was in there was developing the user
25 manuals. That is accurate.

1 MR. MACDOWALL: We'll pass the witness, Your Honor.

2 THE COURT: Any redirect Mr. Slobin?

3 MR. SLOBIN: Yes, Your Honor. Thank you.

4 (Pause in the proceeding.)

5 REDIRECT EXAMINATION OF CHRISTOPHER MICHAEL KEHN

6 BY MR. SLOBIN:

7 Q Let's go back to Defendant's Exhibit 51.

8 (Pause in the proceeding.)

9 Q Mr. Kehn, this is the same document that the Defense
10 Counsel was just referring to. It says, "Worked together with
11 our technical writing team of technical writers." Did you
12 provide any input into what they were writing?

13 A No, we did not.

14 Q Did they ask for your input on what they were writing?

15 A We were not there for input. We were there to learn.

16 Q Okay. Did you have anything to do with writing or
17 drafting, preparing the actual materials of the content of the
18 materials that went into the CATAMARAN software PowerPoint
19 presentation?

20 A No, those were technical writers.

21 Q Okay. How complicated -- on a scale of one to ten --
22 would you say the materials were that you were presenting to
23 the VA personnel?

24 A Four, logically a four.

25 Q Okay. And again, I don't know if the jury fully

1 understood, but tell me you keep saying, "rinse, wash,
2 repeat." Explain that.

3 A What I mean by that is that this the way that it was
4 created and the way the slides were actually put together is
5 so any individual could step in and can teach this course with
6 very little understanding of supply chain concepts to begin
7 with. That's why all of us have various different
8 backgrounds.

9 They weren't meant to be something that, you know, we in-
10 depth knew. It was just simply any question outside of what
11 was on the PowerPoint slide, we didn't -- we very rarely able
12 to answer.

13 Q Okay. So let's talk about the email, the superuser
14 agreement or superuser document and this whole new methodology
15 for -- that we all refer to. You saw that?

16 A Yes.

17 Q Who asked you guys to do that?

18 A No one did.

19 Q Okay. Why -- and I know that's -- let's get this really
20 clear. Who drafted that email?

21 A The email was drafted by Justin Novick.

22 Q Okay. Were you involved at all in drafting the email?

23 A Not the email at all, no.

24 Q Okay. Did you and Justin have conversations about the
25 training system, the CATAMARAN system?

1 A Absolutely. It was our job and we were on-site by
2 ourselves all the time. So yeah, of course we'd be talking
3 about it.

4 Q Okay. And you guys had ideas; is that fair?

5 A That's fair.

6 Q Okay. Why did you have ideas -- let me ask you this? Do
7 you believe that the training process should have been
8 improved?

9 A Absolutely. The VA wasn't happy with the product. We
10 were just trying to figure out a way to make them happy. It
11 wasn't necessarily our job, it was just something that we did
12 on the side when we were -- when we had nothing else to do.

13 Q Tell us what it's like when you're presenting to a room.
14 How many people are you generally presenting to?

15 A Depends on the size of the facility. I mean, it could be
16 anywhere between, you know, three to five people and upwards
17 of 20 live statisticians sitting in a room at a time.

18 Q Okay. And what is that teaching process like? I mean,
19 is it --

20 A It's death by PowerPoint. Literally that's why that's
21 why that CFO wanted that -- wanted us to do something
22 different. We really couldn't. We tried to use the proof of
23 concept and that wasn't working properly.

24 Q Okay. And let's go into a little more detail about -- I
25 think it was -- is it Clarksburg?

1 A Correct.

2 Q Okay what is -- who is that person?

3 A I can't remember the name specifically. I just know
4 that's the CFO there.

5 Q Okay. Someone in charge?

6 A Yeah, he's in charge of the logistics -- the logistics
7 team over at the facility.

8 Q And what did he tell you and Mr. Novick?

9 A He said that I don't want anymore PowerPoint slides. He
10 just flat out said if that's what it is, I don't want you guys
11 here. We were almost kicked off site.

12 Q What do you mean by that?

13 A He told us that if it's just going to be different when
14 we come on site just giving PowerPoint slide presentations, he
15 would kick us off site. He wouldn't allow us to do our
16 training.

17 Q Okay. So what did you guys then try to do?

18 A We tried to think of an alternative way of trying to get
19 these guys to learn the system.

20 Q Okay. Were you going to teach them different materials?

21 A No. It was the exact same materials.

22 Q Okay. The concept which is to teach them how?

23 A Using the proof of concept which is that point -- I think
24 Chaze (phonetic) touched on this earlier -- it was like this
25 small kit that we had to use for training that a lot of times

1 we had issues.

2 Q Okay. So did you have any desire to -- did you deviate
3 from the lesson?

4 A No. Ended up still having to use PowerPoint slides.

5 Q Okay. And I just want to clear this up real quickly.
6 You keep referring to Chaze do you mean Charles Bethas?

7 A Yeah, I'm sorry. Chaze is Charles Bethas. Excuse me.

8 Q Was your job to develop materials?

9 A No. My job was to train.

10 Q Did your primary duty of training ever change?

11 A Absolutely not.

12 Q Did you have any discretion on what you could train?

13 A No. We were given the slides by -- the VA had the okay
14 on it. The technical writers made them up. We were given the
15 slides and we trained on them.

16 Q Okay. Talked about our performance review and your
17 comment about working independently and you tried to say some
18 stuff about travel.

19 A Yes.

20 Q What were you trying to tell us?

21 A That the -- it goes back to what I said before it's just
22 about the frustration of the travel and not knowing what city
23 we were going to be in until the day prior to leaving. Not
24 getting our itinerary until the day before leaving. We -- a
25 lot of times were told when we wouldn't be paid for it.

1 Yes, we would get compensated after the fact. Well a lot
2 of the times we had to cover the cost initially. It was just
3 that in order to survive with this job you had to be very --
4 very good at traveling. You had to be very proficient at it.

5 Q All right. And so when you responded to that answer
6 about working independently, was that what you were referring
7 it?

8 A Yes, it is what I was referring to.

9 Q Okay, all right. And you would know because you filled
10 that out, right?

11 A That's correct, I filled that out.

12 Q Let's talk about that. So you were saying that sometimes
13 you're notified maybe the day or night before as to where you
14 were going to go?

15 A Yes.

16 Q Okay.

17 A That's correct.

18 Q Okay. So are you spending time understanding what
19 that -- whatever hospital you're going to go to what the
20 system is, how they work, what their past system was?

21 A We would have no time. I know that there was assessments
22 on Sharepoint, but we never get a chance to read them. We
23 were never asked to read them. They were just there.

24 We didn't have time to assess the facility. We would get
25 on site and just kind of hit the ground running and train the

1 PowerPoint slides.

2 Q So is it a situation where you walk in and the live tech
3 or the lead tech says here's what you're doing?

4 A Yeah, that's what it had to be because the site leads
5 knew what was best for the site. We would get there, they
6 would tell us what we needed to train and then we would go
7 from there.

8 Q All right. And then you were training whatever slides
9 were given to you?

10 A Correct.

11 (Pause in the proceeding.)

12 Q You talked a little bit about -- Mr. MacDowall talked a
13 little bit about maybe procurements and supply chain and all
14 that. Are you an expert on what the VA hospitals would need
15 to supply their offices?

16 A Not at all. We wouldn't know anything about quantities
17 or quantity needs of items or they were just simply how to use
18 the software to purchase.

19 Q What about pricing for those products? Do you have any
20 knowledge about that?

21 A Not at all.

22 Q Were you negotiating any of those contracts for the VA?

23 A No, we were not.

24 Q Was giving Shipcom ideas on how to improve the training
25 part of your primary duties?

1 A It was not.

2 Q Did management at Shipcom ever call you up and say
3 Mr. Kehn we want to sit down with you and talk about your
4 ideas on improving our products?

5 A No, --

6 MR. MACDOWALL: Objection, Your Honor. Leading.

7 THE COURT: Sustained.

8 MR. SLOBIN: Your Honor, I'll pass the witness.

9 THE COURT: All right. Anything else,
10 Mr. MacDowall?

11 MR. MACDOWALL: Brief Recross, Your Honor.

12 RECROSS-EXAMINATION OF CHRISTOPHER MICHAEL KEHN
13 BY MR. MACDOWALL:

14 Q Mr. Kehn, you just testified that you didn't really know
15 a whole lot about procurement; is that right?

16 A Not that I didn't know a lot of it, just that it wasn't
17 the main function of the job.

18 Q Okay. But the software that you were -- that was being
19 implemented in the hospitals did relate to procurement of the
20 hospitals, right? Procurement for the hospitals; is that
21 accurate?

22 A Yes, for the hospitals. Yes.

23 Q And the software would, for example, tell the hospital
24 personnel how much of a certain item they needed to procure to
25 have enough inventory; is that accurate?

1 A That's accurate.

2 Q And it changed the way that that whole process worked
3 from the way that the VA was doing it before CATAMARAN was
4 implemented; isn't that true?

5 A Yes.

6 Q And you were training them on how to use that system
7 properly to do their procurement processes differently; isn't
8 that accurate?

9 A That's accurate enough, yes.

10 Q You testified earlier that you copied everyone on
11 your -- you copied management folks on your complaint about
12 allegedly being misclassified; is that right?

13 A That's correct.

14 Q Why didn't you copy Rahaul (phonetic) Johnnie or Rahaul
15 Gupta about that on your complaint?

16 A Because they were lower on the rung on the corporate
17 ladder. I copied everyone that was in the highest.

18 Q Same reason you didn't copy Andy Diaz then?

19 A I think -- I think HR is part of -- he received the HR
20 Department emails and I emailed HR and Legal that was
21 included.

22 Q You also testified here on redirect examination that it
23 wasn't your job to develop the materials -- the training
24 materials, right?

25 A That's correct.

1 Q That's because these training materials had to tell these
2 folks how the software actually worked, right?

3 A Yes.

4 Q And how the software worked is the way it worked; isn't
5 that accurate?

6 A Yes.

7 Q So you weren't changing how the software worked by
8 changing the materials, that makes sense. Is that what you're
9 saying?

10 A Yes.

11 Q Okay. But the way you presented the materials to the
12 classroom depended on your -- that was your job, right? It
13 was to present those ideas in a way that was affective; isn't
14 that true?

15 A It was to present the ideas that were on the PowerPoint
16 slides, yes.

17 Q Okay.

18 MR. MACDOWALL: No further questions, Your Honor.

19 THE COURT: All right. Anything else Mr. Slobin?

20 MR. SLOBIN: No, Your Honor.

21 THE COURT: You may be excused Mr. Kehn.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness steps down.)

24 THE COURT: Counsel would you like to break for
25 lunch now and then pick up with new witness after lunch?

1 MR. SLOBIN: I would love to break for lunch, Your
2 Honor.

3 THE COURT: All right. Ladies and gentlemen, we
4 will break for lunch right now. Let's return at 12:45.

5 COURTROOM CLERK: All rise.

6 (Jury exits courtroom at 11:47 a.m.)

7 (Outside the presence of the jury.)

8 THE COURT: Thank you.

9 You-all maybe excused unless there's anything you-
10 all need to raise.

11 MR. NOTESTINE: Be back at 1:00?

12 THE COURT: 12:45.

13 Oh Counsel, one point I did want to make. Let's
14 refer to all witnesses on the stand by their last name as
15 opposed to first names. Just to keep everything as
16 professional as possible.

17 MR. SLOBIN: Oh, sorry, Your Honor.

18 THE COURT: That's all right. That's fine.

19 MR. SLOBIN: I know I was going back and forth.

20 THE COURT: That's all right. Thank you.

21 (Recess taken from 11:48 a.m. to 12:46 p.m.)

22 (Outside the presence of the jury.)

23 COURTROOM CLERK: All rise.

24 THE COURT: Good afternoon everybody. Be seated
25 please. Counsel, for our charge conference today -- just so

1 that I can let the Court staff know -- do you think we'll go
2 more than an hour, an hour and ten?

3 MR. SLOBIN: Your Honor, I don't think so. I mean.

4 MR. NOTESTINE: We really don't have many disputes
5 on jury charge -- most of the pattern jury charge direct sites
6 from the regulations.

7 THE COURT: I had one question on the charge you-all
8 submitted to me there was a Defendant on the goodwill question
9 or instruction.

10 There is a Defendant's suggested question which says
11 if the Defendant has not proved here -- or maybe I have them
12 reversed -- but anyway you both gave me a suggested
13 instruction.

14 Would it be an error to submit both of them so
15 that -- neither one of them is particularly clear. One says
16 that if the Defendant has not shown by the preponderance of
17 the evidence then your verdict should be for the Plaintiff.
18 Then the other one says that the Plaintiff -- I mean if the
19 Defendant has shown --

20 MR. NOTESTINE: I was actually just texting my or
21 emailing my -- one of my associates just to ask her how that
22 is written in the pattern of jury charge for discrimination.
23 I don't know how that -- I mean, --

24 THE COURT: I don't want to create error by
25 including --

1 MR. NOTESTINE: Yeah, I guess including both of them
2 is probably accurate.

3 MR. SLOBIN: I don't know, Your Honor. I would like
4 to look at it when I --

5 THE COURT: Okay, well just keep it in mind --

6 MR. SLOBIN: -- while I'm thinking -- yeah.

7 THE COURT: -- maybe on the break.

8 MR. NOTESTINE: I know exactly what you're talking
9 about. I was actually thinking about the same issue. I
10 believe --

11 THE COURT: I'm sorry to interrupt you, but
12 Ms. Humphrey's --

13 LAW CLERK: With respect to the discrimination
14 charge it says if a Plaintiff has proven by a preponderance of
15 the evidence. But --

16 THE COURT: That's on the burden side.

17 MR. NOTESTINE: Right, we had a burden.

18 LAW CLERK: Right. And what I had submitted to you
19 was the Defendant --

20 THE COURT: Okay.

21 LAW CLERK: -- the Defendant's language.

22 THE COURT: Okay. Then that's --

23 MR. NOTESTINE: Yeah, and I was actually looking at
24 what the pattern jury charge said on that to see how it was
25 it's said on a discrimination case. I was going to argue that

1 whatever that says is the way we should go.

2 THE COURT: Is what we can do.

3 MR. NOTESTINE: Yeah.

4 THE COURT: I'm inclined to go that way then. All
5 right. I'm sorry that I did not give you the opportunity to
6 tell us first what --

7 MR. NOTESTINE: Same idea that I did.

8 THE COURT: Okay. And are we ready?

9 MR. SLOBIN: We are, Your Honor.

10 THE COURT: All right. We're ready Ms. Williams.
11 Thank you.

12 COURTROOM CLERK: All rise for the jury.

13 (Jury enters courtroom at 12:49 p.m.)

14 THE COURT: Be seated. Thank you.

15 Counsel, you may call your next witness.

16 MR. SLOBIN: Your Honor, Plaintiffs call Justin
17 Novick to the stand.

18 THE COURT: Would you raise your right hand,
19 Mr. Novick?

20 (Witness sworn.)

21 DIRECT EXAMINATION OF JUSTIN ERIC NOVICK

22 BY MR. SLOBIN:

23 Q Mr. Novick, would you please state your name for the
24 record?

25 A Justin Novick -- Justin Eric Novick.

1 Q Okay, Mr. Novick are you familiar with Shipcom?

2 A I am.

3 Q Were you employed there?

4 A I was.

5 Q All right, from what time to what time?

6 A That was May of 2013 -- sorry, excuse me -- 2014 to March
7 of 2015.

8 Q Okay. And tell me what you did while you were employed
9 at Shipcom.

10 A I was a trainer.

11 Q Okay. And tell me briefly what you did as a trainer.

12 A We would go to various VA hospitals training their
13 logistics or clinical staff on how to use Shipcom's CATAMARAN
14 software.

15 Q All right. And I know we talked a lot about that
16 CATAMARAN software was. But would you again give your version
17 of what the CATAMARAN software was?

18 A It was an inventory management software where
19 logisticians to order their hospital inventory and clinicians
20 to grab it and use it for the patients.

21 Q And tell me what was involved in your training duties.

22 A Primarily it was us using PowerPoint slides to showcase
23 how the software works.

24 Q And who were you presenting that -- the training to?

25 A The logistics staff. So the staff that would make all

1 the magic happen behind the scenes or handle the inventory.
2 And then a little bit of the clinical staff. So nurses, LPNs,
3 some of the doctors.

4 Q Who would determine who you were going to train?

5 A The site leads.

6 Q Okay. And who would determine when you were going to
7 train?

8 A Site leads.

9 Q And who would tell you where you were going to train?

10 A Site leads.

11 Q Okay. And describe for me, if you will, what the
12 training looked like and felt like when you were going through
13 the process of training?

14 A Sure. Classroom setting. I usually in a small
15 conference room. Screen just like that and me just kind of
16 running through the slide decks.

17 Q Okay. How did the people you were training, how did they
18 receive your training or your instruction?

19 A Horribly.

20 Q Okay and what do you mean by that?

21 A It was real sleepy. It was just extremely repetitive.
22 The decks themselves weren't very well refined. It wasn't
23 very showy. It was just kind of the same thing over and over
24 again.

25 Q Okay. And when you would kind of drop into one of the

1 hospitals, how long were you generally there?

2 A When I first started I was -- when I first started it was
3 pretty much a week at a time. Eventually it became two weeks
4 and occasionally like three.

5 Q Okay. And the entire time that you were at the hospital,
6 what is it that you're doing?

7 A Training.

8 Q Same --

9 A Yeah.

10 Q -- PowerPoint presentation?

11 A Same PowerPoint presentations ad nauseam.

12 Q All right. And I believe this has come out, but we've
13 talked about different hospitals having different modules.
14 Would you explain that?

15 A Sure. So it was essentially like -- there was one-on-one
16 this is why we're here, this is why we're taking up your
17 valuable time. This is what the software solution is. Sort
18 of a why and then the modules would either cover various, you
19 know, hardware components as the other Plaintiff's have
20 described. And then a scaling up by job functions.

21 So going from entry level to item manager essentially.

22 Q All right. And would every hospital have the same
23 modules?

24 A No.

25 Q Okay. And why would there be differences?

1 A The VA hospitals vary by function, as Mr. Bethas
2 described. So some were specialized in certain fields of
3 medicine. Some just don't have the resources to have actual
4 closets that, again as Mr. Bethas and Mr. Kehn described, to
5 have things like the kiosk.

6 Q And if you're teaching different modules to different
7 hospitals, who's directing you? Like who's telling you this
8 is what you're supposed to teach?

9 A That would be the site lead with a lot of input from the
10 chief and field chief logistics officers.

11 Q Okay. And what kind of notice would you have that you're
12 going to be at Hospital X or Y?

13 A Extremely last minute.

14 Q Okay. And were you able or did you do any prep work when
15 you were heading to a hospital about their systems?

16 A No.

17 Q Okay. Did that at all impact what you were teaching?

18 A Yes. Yeah, we'd did show up with this, you know,
19 cookie-cutter slide decks and not necessarily know the nuances
20 of these very nuanced hospitals. We didn't know what we were
21 getting into every time we showed up.

22 Q Okay. Defendants try to make it seem like you're really
23 involved in that process. You're figuring out what the system
24 in place and how you're going to change it and how you're
25 going to teach them about the new system. Is that accurate?

1 A I wanted it to be.

2 Q Okay.

3 A You-all saw my long winded emails and such and as much as
4 I wanted to be, that's not the case. That was not realistic
5 whatsoever.

6 Q Okay. Let me ask you a couple questions -- because
7 that's what I'm here to do. I'm sorry. Were you involved in
8 the creation and development of the curriculum that you were
9 charged with teaching?

10 A I was around it. I was not primarily involved in it. So
11 I did not affect the actual creation of it.

12 Q Okay. I mean did you do any of the drafting of the
13 training materials?

14 A No.

15 Q Okay. Was your input sought when the drafting of the
16 training materials was being done?

17 A No, no.

18 Q Okay. Who was in charge of the creation and development
19 of the training curriculum?

20 A It was all management, development teams.

21 Q Did you follow the training materials?

22 A To the best of my ability, yes.

23 Q Could you deviate from the training materials? Let me
24 ask a more specific question.

25 A Please.

1 Q Could you deviate from the content of the training
2 materials?

3 A Absolutely not. It was not allowed by the Federal
4 Government or the Veterans Administration.

5 Q Okay. And so when you bring that up, did someone review
6 this material before you presented it?

7 A Absolutely.

8 Q Okay, who did that?

9 A That was -- well the development and management teams of
10 Shipcom Wireless as well as the product team from the VA. So
11 those are the folks at the Government level that were
12 essentially the project management function of implementing
13 this software.

14 Q Okay. And how many times did you think that you gave the
15 PowerPoint presentation?

16 A Three hundredish probably.

17 Q All right. And is it essentially the same presentation
18 every time?

19 A Absolutely.

20 Q Okay. What's that like?

21 A Made me a little nuts. I think -- I have a healthcare
22 background and I was really excited to actually have -- my
23 healthcare folks. And eventually realized that it was ad
24 nauseam and it was actually kind of devastating because I
25 thought I was actually going to do some good.

1 Q How would you describe yourself as an employee?

2 A Committed.

3 Q All right. I think Mr. Kehn described you as an idea
4 guy. Would you -- do you have the same feeling about
5 yourself?

6 A I think so. Yeah, yeah.

7 Q What does that mean to you?

8 A I see things that are broken, I like to fix it. Because
9 I have a healthcare background just like get in there and
10 that's what I feel like I am is an idea guy. I don't have as
11 education background, but you just get in and fix what's
12 broke.

13 Q Okay. Was that part of your job working at Shipcom?

14 A No.

15 Q Did they ask you to be their idea guy?

16 A No. No, no.

17 Q Okay. Did you see ways that Shipcom's training could be
18 improved?

19 A Absolutely.

20 Q Okay. Did you ever -- well I'm going to come back to the
21 whole section. Let me get through some other stuff. Well,
22 you know, I'll do it.

23 Did you ever provide your thoughts on how they could
24 improve their software?

25 A I did.

1 Q Okay. And let me rephrase that question. Did you give
2 them ideas on how to improve their software or their training?

3 A May I answer both?

4 Q Go for it.

5 A So in respect to the software, we did receive -- in
6 training we did receive feedback from the actual attendees.
7 There's the people that are, you know, doing the mouse clicks
8 and keystrokes. This button doesn't make any sense over here.
9 That's a lot of extra work for me to move my arm when I have
10 to do a bunch of repetitive tasks.

11 So yes. And especially when I first started because I
12 was just going to call myself absolutely fool of myself. And
13 would occasionally provide feedback to Mufaddal who is one of
14 the developers that I was close with. I was like hey the
15 end-users think this would be more efficient.

16 So in regards to your question about software, that was
17 my feedback back to them.

18 Q Okay. Let me ask you on that really quick.

19 A Please.

20 Q So, the idea to move a button over or to make a change
21 that wasn't your -- was that your idea?

22 A No.

23 Q Okay, were you just passing on information?

24 A I was a conduit, yes.

25 Q Okay. All right, now let's talk about the actual

1 training.

2 A Please.

3 Q Did you have ways that you wanted to improve the
4 training?

5 A I did have ways that I wanted to improve the training,
6 yes.

7 Q Okay. And did you -- were you asked by the company to do
8 that?

9 A No.

10 Q Did you convey that to the company?

11 A I did.

12 Q Okay. And how often?

13 A To the best of my recollection -- as everyone in this
14 room has seen -- there was the email with the feedback and my
15 superuser concept from Clarksburg, so that's a solid one.

16 Q Okay.

17 A When I first started, I may have provided feedback to
18 some of the site leads and not necessarily, you know, upper
19 management, but just the folks that I'm in the weeds with.
20 Maybe this would be better.

21 Q Okay. And what I just want to make sure I've got my
22 numbers -- my numbers correct. So you're saying maybe at
23 least one time, okay, out of over 300 presentations; is that
24 fair?

25 A That is fair.

1 Q Okay. All right. Let's talk about the superuser
2 training. Is that term -- is that -- did you come up with
3 that term?

4 A I did not.

5 Q What is that?

6 A That's pretty frequently used term in regards to software
7 in general. So usually when there are trainings being
8 implemented, you'll identify sort of like your basic end user
9 and then there's the superuser. Ideally these are the sort of
10 folks that can absorb as much of the actual processes as
11 possible and then ideally after you leave they're the ones
12 that are training their staff to scale.

13 Q So what prompted you to write -- it's Plaintiff's Exhibit
14 30. What prompted you to write that?

15 (Pause in the proceeding.)

16 A Thank you. What prompted me to write this was we were in
17 Clarksburg, West Virginia with -- the chief logistics officer
18 there was not super open to change. Understandably so and he
19 was just a bit weary of, you know, another business coming in
20 and disrupting his show. And they -- he was -- nice guy deep
21 down for sure, but he was hostile. He was hostile to the
22 company. He was hostile to the materials. He was hostile to
23 strange faces. He was protective of his business.

24 That's what the VA -- every site of the VA thinks of
25 itself as a small business because that's how they operate.

1 So when, as Mr. Kehn testified earlier, when he was like we're
2 going to kick you out of this site if you don't come up with
3 something else.

4 And so I stayed up a lot of nights in a row that we can
5 just make this.

6 Q Okay. All right. And then there's some references to
7 alcohol in here. Would you just explain that so that the jury
8 understands?

9 A I hope that you don't fault me for comforting myself with
10 a few beers while staying up all night away from my friends
11 and losing relationships back home while re-arranging somebody
12 else's blind slide deck.

13 Q Okay. And so are you saying that after one of those late
14 nights of having a couple beers you wrote this?

15 A Absolutely.

16 Q Okay. And what was your goal in writing this?

17 A To -- my goal in writing this and my goal for every
18 moment that I spent with Shipcom Wireless was to make sure the
19 patients get cared better. To get the things to patients
20 better.

21 Q Okay.

22 A And my thoughts was if I can streamline this training and
23 actually not take up these extremely important parts of the
24 machine the logistician and the clinical staff's time as this
25 would take a week of their time or more -- that they would

1 absorb quicker and we could get out of there and stop messing
2 up their shift.

3 Q Okay. Were you changing, in your superuser guide here,
4 were you changing the content of what you were training?

5 A No.

6 Q Okay. Is this just a different way of presenting the
7 same material?

8 A Yes.

9 Q There was some discussion with Mr. Kehn on this email.
10 Who wrote this email?

11 A I wrote this email.

12 Q Okay. And you sprinkled Mr. Kehn's name throughout this.
13 Why did you do that?

14 A He was one of my best friends and I would take a bullet
15 for that guy. And I -- he was putting in 110 percent to be
16 cheesy, I apologize. And deserved recognition, you know, if
17 he wasn't actually typing an email with me.

18 Q He wasn't with you when you were typing this up --

19 A No, no.

20 Q -- to send?

21 A This is definitely me in a hotel room.

22 Q Okay. And you say you're just giving him some credit
23 for?

24 A He's not the only one. I did that with Irfana Hussain
25 who was one of the technical writers who was busting his --

1 excuse me. He was also putting in a lot of effort and people
2 were working very, very hard and deserved recognition. So
3 yeah this is kind of my style.

4 Q Okay. Again, no one at Shipcom asked you to do this?

5 A Absolutely not.

6 Q So you wrote this, you sent it to Shipcom. I assume they
7 just took this and followed this along and let you do it the
8 way you wanted to do it; is that fair?

9 MR. MACDOWALL: Objection, Your Honor, leading.

10 MR. SLOBIN: So what happened. I'm sorry.

11 THE COURT: Sustained.

12 BY MR. SLOBIN:

13 Q What happened when Shipcom received this?

14 A To the best of my recollection, nothing was acknowledged
15 about the good job or any of that. It was like, no, no, no.
16 You can't -- it's a contract -- it's the VA contract. You
17 can't mess with it. It's been approved by the VA.

18 Q Okay. So after you sent this email, I assume you did the
19 training at -- is it? Where was the training?

20 A It was Clarksburg, West Virginia.

21 Q Okay. Did you -- so you conducted the training?

22 A I did.

23 Q All right. And so how did the training change?

24 A We were more expedient otherwise we stuck to the script.
25 We just -- we hauled. We went through it really, really fast

1 because this guy was frankly kind of intimidating. But
2 otherwise, we did not change a thing.

3 Q All right. And if I recall your testimony, you said that
4 he did not want you to do PowerPoint presentation; is that
5 fair?

6 A That is correct, yes.

7 Q All right, so did you do PowerPoint presentations?

8 A We did.

9 Q All right.

10 (Pause in the proceeding.)

11 Q And then I know we've gone over this plenty of times, so
12 I won't belabor it. Just tell me the difference between
13 pre-implementation and post.

14 A Pardon me, I'm sorry. Pre-implementation is nothing has
15 been -- at least from the software side -- nothing has been
16 installed. Nothing is live yet. So the pre-implementation
17 training is us showing PowerPoint presentations. And then
18 post-implementation -- which I really wasn't around for, I was
19 gone before they could, you know, really role this out.

20 I believe it's more like one-on-one like you're shadowing
21 folks when they're actually performing their actual work.
22 Again, I don't have much experience with that part with
23 Shipcom.

24 Q Okay, so you weren't there at all during the post?

25 A I was present -- I apologize. I'm sorry.

1 Q Would you like some water?

2 A I was going to ask for some. Is that okay? Appreciate
3 it. I was present for Coatesville, Pennsylvania. That was
4 the first -- to my knowledge that was the first go-live. I
5 was there for maybe a week after the software went live.

6 Q All right, I'm going to go through this laundry list of
7 questions with you, so try to be expedient.

8 Did you do any work directly related to tax, finance or
9 accounting while you were at Shipcom?

10 A I did not.

11 Q Did you do any work relating to budgeting or auditing
12 while you were at Shipcom?

13 A No, sir.

14 Q Did you do any work directly related to insurance,
15 quality control or purchasing?

16 A No.

17 Q Okay. Did you do any work related to procurement?

18 A No.

19 Q Okay. And there's been some chatter, if you will, about
20 procurement and purchasing. Tell me, if you will, did the
21 CATAMARAN software have a function relating to those items?

22 A Yeah, yes, yes. That's the purpose of the software.

23 Q Okay.

24 A But for the company of Shipcom I never procured any
25 materials that -- excuse me -- that Shipcom needed.

1 Q Okay.

2 A Nor did I ever go to the VA and be like you need to buy
3 these -- this type of gloves.

4 Q Okay.

5 A In regards to procurement, as they state, this software
6 is essential like a Facebook to buy stuff. It's like hey like
7 here's how you click on something on a website to make
8 materials show up. It was completely -- it was a concept at
9 that point. It was so early in the game. So no, I had
10 nothing to do with procurement.

11 Q Did you tell any of the VA hospitals how much of any item
12 to procure or purchase?

13 A Absolutely not.

14 Q Did you tell them what items to procure or purchase?

15 A No.

16 Q Okay. Did you do any work directly related to -- excuse
17 me -- advertising or marketing research?

18 A I did not.

19 Q Did you do any work directly related to safety and
20 health?

21 A No.

22 Q Did you do any work directly related to personal
23 management or human resources?

24 A No.

25 Q Did you do any work relating to employee benefits or

1 labor relations?

2 A No.

3 Q Did you do any work related to public relations or
4 government relations?

5 A No.

6 Q Did you do any work related to computer network?

7 A No.

8 Q Did you do any work related to internet and database
9 administration?

10 A No.

11 Q Did you do any work directly related to legal -- excuse
12 me -- and regulatory compliance?

13 A No.

14 Q Were you engaged in running Shipcom?

15 A No. I was a trainer. Sorry, I apologize.

16 Q No, that's okay.

17 A You've all read these questions a thousand times.

18 Q Were you responsible for determining Shipcom's overall
19 course or policies?

20 A No.

21 Q Did you design any of the CATAMARAN Software?

22 A I did not.

23 Q Were you part of the team that designed any of the
24 CATAMARAN Software?

25 A I was not.

1 Q Did you have any authority to formulate or affect
2 Shipcom's management policies?

3 A I did not.

4 Q Did you have any authority to interpret or implement a
5 Shipcom's management policies?

6 A I did not.

7 Q Did you have any authority to formulate or affect
8 Shipcom's operating practices?

9 A No.

10 Q Did you have any authority to interpret or implement
11 Shipcom's operating practices?

12 A No.

13 Q Were you able to commit Shipcom in matters that have
14 significant financial impact?

15 A No.

16 Q Did you have authority to wave or deviate from
17 established policies and procedures without prior approval?

18 A No.

19 Q Did you have authority to negotiate and bind Shipcom on
20 significant matters?

21 A No.

22 Q Did you provide consultation or expert advice to Shipcom
23 management?

24 A No.

25 Q Okay. Other than -- and I want to be really clear --

1 other than that email that you sent?

2 A In my opinion, I was not being paid nor was it my primary
3 duty to provide any sort of expert advice or consultation to
4 Shipcom as a company or its management.

5 Q Did you believe that the advice that you were providing
6 was expert advice?

7 A Yeah, 27 year old meaning that, for sure. But it wasn't
8 legal. It was just me being young and yeah I thought I was
9 awesome.

10 Q All right. Were you involved in planning long or short
11 term business objectives for Shipcom?

12 A No.

13 Q Did you investigate and resolve matters of significance
14 on behalf of Shipcom's management?

15 A No.

16 Q Did you represent the company in handling complaints,
17 arbitrating disputes or resolving grievances?

18 A I heard a lot of complaints from customers, but that was
19 not my job nor did I do anything to resolve said complaints.

20 Q Okay. But was that a task that was assigned to you?

21 A Absolutely not. Sorry to cut you off. I apologize.

22 Q Did you ever negotiate a contract with the VA?

23 A I did not.

24 Q Did you ever negotiate any pricing terms with the VA?

25 A No.

1 Q Did you participate in any management meetings at Shipcom
2 regarding the direction of the company?

3 A No.

4 Q Did you have any input into which hospitals you were
5 training at?

6 A No.

7 Q Did you discipline any employees?

8 A I did not.

9 Q Did you devise any marketing plans?

10 A No.

11 Q Did you decide whether or how to recruit potential hires?

12 A No.

13 (Pause in the proceeding.)

14 MR. SLOBIN: Your Honor, I'm going to put up
15 Plaintiff's Exhibit 26.

16 BY MR. SLOBIN:

17 Q Mr. Novick, what is this document?

18 A This appears to my employment offer and agreement letter.

19 Q Okay. Is this around the time that you were hired?

20 A Yes.

21 Q Okay. And take a minute to review the duties and
22 responsibilities.

23 (Pause in the proceeding.)

24 Q Do you see that first bullet? Let me show you. It says,
25 "Preparation of Training materials?"

1 A Yes.

2 Q Okay. What does that mean to you? And let me ask a
3 better question, I'm sorry. What does that mean to you in
4 relationship to your job? Like, what did that -- what did you
5 do?

6 A To me that was making sure they were accessible. So
7 having a hard copy on my company issued laptop or on a thumb
8 drive or having printed materials either ahead of time or
9 while in whichever city I was going to be training in.

10 Q Okay.

11 MR. SLOBIN: Your Honor, I'm going to put up
12 Plaintiff's Exhibit 32.

13 BY MR. SLOBIN:

14 Q Mr. Novick, will you turn to that in your book?
15 Actually, it's kind of a thick Exhibit.

16 A It is.

17 Q But if you'll talk about the coverage page. Tell me what
18 this is.

19 A Excuse me. I'm sorry. So this was an email that I had
20 sent to everyone that you see on the to and cc list. So while
21 we were in Coatesville, it was the first go-live that we did
22 and it was the first time that we had that many boots on the
23 ground. And as we've all been testifying as today, there was
24 a lot of new faces. And no one -- excuse me not no one, but
25 the majority of people didn't know what was going on, there

1 were subcontractors, they didn't know what it was that we were
2 actually doing. It was just a lot of little moving parts.

3 And because frankly this thing didn't work, a lot of VA
4 staffers were asking subcontractors and such like how do I
5 order so and so. And so JP Renaud -- we've talked about
6 before -- and Reddy as well, I believe, had taken me aside at
7 Coatesville and asked me to put together an internal training
8 webinar basically. And they asked me to work with Rahual
9 Gupta and Shahrzad Ahmadi using the cc list and this is the
10 email saying look we did it.

11 Q Okay. Are these the training materials that you
12 compiled?

13 A Compiled, yes.

14 Q Okay. And what did you compile those training materials
15 from?

16 A From all of the previously available training materials
17 that we had been training all of the VA staff with.

18 Q Did you create any new training material?

19 A The only thing was either an agenda -- because it was a
20 two-day webinar. So literally a slide that's today on this
21 day we're covering these things. And I also recall at the end
22 of this deck, I did -- basically I put together a list of sort
23 of best practices for line level employees being on site at a
24 go-live. So just literally bullet points of things like don't
25 swear, you're in a hospital. And don't leave the site to go

1 to lunch. And this is to the best of my recollection. I
2 apologize. But other than that, no I did not create any new
3 content.

4 Q And did you revise any of the content that was already in
5 place?

6 A No.

7 Q When did your employment end?

8 A I'm pretty sure the actual date was March 13th, 2015
9 because it was a Friday the 13th, so it sticks.

10 Q How did you employment end?

11 A With a polite two-week notice. And I resigned.

12 Q Why did you resign?

13 A Because that place was a nightmare.

14 MR. MACDOWALL: Your Honor, this line of question is
15 relevant.

16 THE COURT: Do you have any further response?

17 MR. SLOBIN: No. Oh, do I have any further
18 response? Your Honor, I think it's relevant. I think I've
19 asked the other client's why their employment ended. I
20 thought it was -- I think it's relevant.

21 THE COURT: Very briefly. You don't need to -- it's
22 not --

23 MR. SLOBIN: I'm going to move on. I just --

24 THE COURT: All right.

25 BY MR. SLOBIN:

1 Q How were you compensated while you were at Shipcom?

2 A I'm a salaried, was paid once a month.

3 Q Were you ever reclassified?

4 A I was not.

5 Q Okay. Why were you not reclassified?

6 MR. MACDOWALL: Objection, Your Honor. Calls for
7 speculation.

8 BY MR. SLOBIN:

9 Q Do you know why you were not reclassified?

10 A I do not, no.

11 Q Let me ask this. So when did you say you were employment
12 ended?

13 A March of 2015.

14 Q Okay. And you've seen documents in front of you during
15 this trial that the reclassification was in September of 2015?

16 A That is correct, yes.

17 Q Okay. So were you there when the reclassification took
18 place?

19 A I was not.

20 Q Did Reddy -- and do you have his last name? I can't
21 pronounce it?

22 A I apologize, I cannot. Cherukupally.

23 Q Did he ever personally observe you performing your job
24 duties?

25 A Not that I know of, no.

1 Q Okay. And what about Nakul Goenka, did he ever
2 personally observe you performing your job duties?

3 A Absolutely not.

4 (Pause in the proceeding.)

5 MR. SLOBIN: Your Honor, I'll pass the witness.

6 THE COURT: All right. Cross-examination?

7 (Pause in the proceeding.)

8 MR. MACDOWALL: Thank you, Your Honor.

9 CROSS-EXAMINATION OF JUSTIN ERIC NOVICK

10 BY MR. MACDOWALL:

11 Q Good afternoon, Mr. Novick.

12 A Good afternoon.

13 Q You're a college graduate, aren't you?

14 A I am. I went to Malcolm X College in Chicago.

15 Q Graduated in 2010; is that right?

16 A I did.

17 Q Graduated with an associates degree in applied science;
18 is that true?

19 A Correct.

20 Q You also earned a paramedic's license there, right?

21 A I did.

22 Q And part of earning your college degree, is it true, that
23 you worked as an emergency medical technician for awhile?

24 A I did.

25 Q Worked for approximately two years in that position?

1 A I did.

2 Q And you worked for a private ambulatory company; is that
3 true?

4 A Yes.

5 Q And after you earning your degree and your license, you
6 were promoted to paramedic in 2010; is that accurate?

7 A That is accurate, yes.

8 Q And you worked as a paramedic for that company for about
9 three years; is that accurate?

10 A Yes.

11 Q And while working as a paramedic, isn't it true that you
12 were one of the ones selected to train incoming EMT's on
13 processes and procedures?

14 A Yes.

15 Q You would ride in the back of the ambulance, for example,
16 and assess how the EMT's were doing at their job; is that
17 accurate?

18 A That is accurate.

19 Q Provide feedback and instruction; is that true?

20 A That is true.

21 Q You also worked for a period of time as a clinical
22 trainer at Malcolm X College; is that accurate?

23 A Volunteered. But, yes.

24 Q And that was the same college where you graduated from;
25 is that --

1 A That is correct, yes.

2 Q And as a clinical trainer, you educated EMT students on
3 the use of medical equipment; is that accurate?

4 A Yep.

5 Q Showed them how it worked and how they would use it in
6 their jobs; is that right?

7 A Yes.

8 Q Now while working as a paramedic, you also worked at the
9 College of Medicine at the University of Illinois Chicago; is
10 that true?

11 A That is true.

12 Q You worked in a position called Simulated Technician; do
13 I have that right?

14 A Simulation Technician, yes.

15 Q Simulation Technician?

16 A Yes.

17 Q And you trained hands-on skills to medical students and
18 medical residence in that job; is that true?

19 A That is true.

20 Q Taught them how to use different medical devices?

21 A May I elaborate? It's basically it was when residents
22 were and first -- it was like medical students and mostly
23 first and second year residents and first and second year
24 showing them how to do most procedures that typically
25 registered nurses would be doing.

1 Because you always -- University of Illinois at Chicago
2 is really into getting the doctors into the weeds so they
3 could, like, cut down on wait times. So, sorry. It's a weird
4 job I needed to explain.

5 Q And so you were teaching them techniques that they were
6 going to use in their practices; --

7 A Correct.

8 Q -- is that right? You held that job from approximately
9 2010 to 2014 off and on; is that accurate?

10 A That's accurate, yes.

11 Q And after working at the University of Chicago, you moved
12 down to New Mexico; is that true?

13 A University of Illinois at Chicago.

14 Q Right. After University of Illinois, Chicago, got it,
15 you went down to New Mexico

16 A UFC is way better. Yeah. Yes, I went to Albuquerque,
17 yes.

18 Q And your next place you started working for a hospital
19 system; is that true?

20 A That's true.

21 Q And you worked there as a learning coordinator. Do I
22 have that title right?

23 A That's what's on my LinkedIn, yeah.

24 Q Was that actually the title of the job?

25 A I think so. Obviously I can't recall, but yeah that's

1 what I go by now.

2 Q Well in that job, you were registering nurses and doctors
3 for learning modules for things they had to take to keep up
4 licensing that sort of thing; is that right?

5 A The hospital system was implementing an electronic
6 medical record technology. It's Epic Systems. And so in
7 order for the clinical side of the hospital to stay employed,
8 frankly, they had to take a bunch of classes and say I was
9 the -- basically the background guy registering people for
10 classes.

11 Q You then moved to Los Angeles where you eventually
12 applied for employment with Shipcom; is that right?

13 A That's correct.

14 Q And you did that in 2014?

15 A Correct.

16 Q And you applied for a job as a trainer?

17 A That is correct.

18 Q And you applied for that job because you thought it
19 matched your skill set; is that accurate?

20 A Yes.

21 Q And the skill set we're talking about is your skill set
22 that you'd developed working as an EMT, later as a paramedic
23 and doing trainings in those roles; is that right?

24 A That's correct, yeah.

25 Q And also in your role as a simulated -- simulation

1 technician as well; is that right?

2 A Correct.

3 Q Okay. And you talked on your direct examination about
4 the offer letter that you signed with Shipcom; is that right?

5 A Yes.

6 Q And you reviewed that offer before signing it, didn't
7 you?

8 A Sort of, kind of.

9 Q Okay.

10 A I had just moved to L.A., you know, it's like yes I took
11 the job.

12 Q Well, you knew going into it you knew that you were going
13 to be compensated at an annual salary of \$45,000 a year by
14 Shipcom; did you not?

15 A That is true.

16 Q And you knew that that was for all services to be
17 performed for the company during your employment, right?

18 A To the best of my knowledge, sure yeah.

19 Q Well, do we need to get it out and read it? That's what
20 the offer letter said, right?

21 A If you want to review it, sure. Yeah, now I'm saying I
22 didn't appreciate the nuances of all of the services being
23 compensated for.

24 Q Okay. So then it's your testimony that you may not have
25 read the letter closely enough to understand that, but that's

1 what the letter said, right?

2 A Yes, that is my testimony. Yes.

3 Q And you were actually compensated by the company at
4 \$45,000 annual salary for the majority of your employment; is
5 that right?

6 A That is true, living in Los Angeles.

7 Q And then in January of 2015, you received a raise by the
8 company; is that true?

9 A That is true.

10 Q You started earning \$55,000 annual salary; is that right?

11 A That is true.

12 Q You never complained to anyone at Shipcom that you
13 thought you were misclassified as exempt from overtime; is
14 that accurate?

15 A I did not.

16 Q Now you talked a little bit on your direct examination
17 about how as a trainer you were out at these medical hospitals
18 training folks on the implementation of the CATAMARAN
19 software; is that right?

20 A Yes.

21 Q And we'll cover that in some detail, but I'll go over a
22 couple of things here. Is it accurate that you worked at
23 approximately 20 different VA medical hospitals during your
24 employment with Shipcom?

25 A Roughly, yes.

1 Q And you were training these folks on the inventory
2 management software that was being implemented as part of
3 Shipcom's or one of the modules that Shipcom was running on;
4 is that right?

5 A Yes. Yes.

6 Q And you also trained on the procurement model that would
7 allow the hospitals to procure medical supplies; is that
8 accurate?

9 A I got to do that maybe twice. That was -- that came out
10 right when I had resigned.

11 Q Okay. And do you recall approximately when that was?

12 A Like January, February of 2015.

13 Q Okay. But up to that point, the POU program -- which was
14 the inventory monitoring part of the program -- was -- was
15 what you were training folks on; is that accurate?

16 A That is correct, yes.

17 Q And the hospital staff, just to make sure we're clear,
18 they were using that particular module to make sure they knew
19 how much medical supplies they had at different areas of the
20 hospital at a given time; is that accurate?

21 A That's accurate, yes.

22 Q And is it also accurate that that module would actually
23 tell them how much supply they were supposed to have?

24 A If it was working, yeah. Theoretically it was supposed
25 to be, yes.

1 Q And we call that a PAR level, right?

2 A Correct.

3 Q It just means the amount of particular type of inventory
4 they should have in supply to make sure they can meet their
5 needs; is that accurate?

6 A That is accurate.

7 Q And this particular module, the software, was changing
8 the way that the VA hospitals had been doing it previously; is
9 that accurate?

10 A To the best of my knowledge, yes.

11 Q Okay. And the purpose of monitoring these supplies was
12 to make sure that you optimized patient outcomes; isn't that
13 true?

14 A For me, yeah.

15 Q Well for the hospital as well, right? Isn't that the
16 purpose of --

17 A Hopefully yes, yes.

18 Q And training folks was your primary job, right?

19 A That was my primary function, yes.

20 Q And you would agree with me that in order to train these
21 folks, you had to have a good understanding of the solution
22 that you were actually training folks on?

23 A I had to be able to speak about it eloquently, yes.

24 Q And accurately; is that right?

25 A To the best of my ability, yes.

1 Q Enough so that the folks that who were listening to you
2 could use the software effectively; isn't that right?

3 A Yes.

4 Q So if I understand your testimony you may not have had to
5 explain it enough so that folks could write their own
6 software, right?

7 A My testimony is saying that I did not study supply chain
8 management. I don't understand theories necessarily. I can
9 point people towards the most efficient way that they can use
10 a software as a service, yes.

11 Q Okay. So you understood the software enough so that you
12 could effectively and efficiently train the hospital staff on
13 the use of that software?

14 A I understood the interface well enough to train people.
15 I don't know anything about backends or coding.

16 Q Okay. Let's do it this way then. At the end of your
17 training session, should the folks that you were training have
18 a sufficient understanding of the software to be able to use
19 it in their jobs?

20 A Ideally, yes.

21 Q You developed that understanding that we're talking about
22 of how the software worked and what the solution was through a
23 trial and error process; would you agree with that?

24 A I do, yes.

25 Q And that technique of trial and error what we're talking

1 about is your going into the test environment and basically
2 playing with the software to make sure that you understood how
3 it worked; is that accurate?

4 A That's correct, yes.

5 Q In a way, you were teaching yourself the software; isn't
6 that true?

7 A That is true.

8 Q And you followed that trial and error technique
9 throughout your employment with Shipcom; is that true?

10 A Yeah. Yes, that is true.

11 Q And there were different versions of the software of
12 CATAMARAN that Shipcom rolled out during the term of your
13 employment; isn't that right?

14 A That is correct, yes.

15 Q You would estimate there was approximately nine different
16 modules of the system that rolled out during your 10 months of
17 employment?

18 A Yes, that is correct.

19 Q Now during the go-live portion of the training on-site,
20 that's when -- excuse me, the pre go-live part of the
21 training. That's when you were using the PowerPoint
22 presentation; is that accurate?

23 A Yes.

24 Q Those were the ones where you just in a classroom setting
25 teaching people that software?

1 A Yes.

2 Q In a post go-live setting, you were actually one-on-one
3 with these individuals without PowerPoints, right?

4 A I'm sorry, can you repeat that?

5 Q In the post go-live setting, you were in one-on-one
6 situations with the VA hospital staff to train them, right?

7 A Very briefly. That wasn't my thing. I was the classroom
8 guy. Maybe side-chaired with like a couple of people in
9 Coatesville.

10 Q During that or during the go-live --

11 A Yeah, yeah.

12 Q -- at Coatesville is that what we're talking about?

13 A Yes.

14 Q And in that setting, you were one-on-one situation with
15 folks that you were trying to train; is that accurate?

16 A That is accurate, yes.

17 Q And isn't it true that you were one of the first trainers
18 that Shipcom hired?

19 A I was number two. Excuse me. That I know of.

20 Q Let's look at Defendant's Exhibit Number 38.

21 (Pause in the proceeding.)

22 MR. MACDOWALL: Sorry, Your Honor. It appears
23 technical difficulties, once again. Let's switch to the Elmo.

24 (Pause in the proceeding.)

25 BY MR. MACDOWALL:

1 Q Mr. Novick, if you could look at Defendant's Exhibit
2 Number 38.

3 (Pause in the proceeding.)

4 Q Do you recognize this document, sir?

5 A I do.

6 Q And this is a copy of an email that you sent on February
7 3rd, 2015; is that right?

8 A Yes.

9 Q And you sent it to a Martin Wiseman (phonetic) at va.gov;
10 is that accurate?

11 A It appears so, yes.

12 Q Who is Mr. Wiseman?

13 A I don't recall, but it had to have been somebody on the
14 logistic staff of one of the VA's.

15 Q And the purpose of your email is noted there in that
16 first paragraph sort of an introductory email to someone at
17 the VA staff about an upcoming site visit; isn't that
18 accurate?

19 A That is accurate.

20 Q And you indicate in this email that you and Mr. Kehn are
21 going to be traveling onsite to conduct training; isn't that
22 accurate?

23 A Yes.

24 Q And you attached several documents to this introductory
25 email sort of give an overview of the training program, don't

1 you?

2 A I did.

3 Q And we can see there in those bullet points. It's an
4 introductory training letter, a logistics training overview, a
5 clinical training overview, and a generic training schedule;
6 is that right?

7 A Yes.

8 Q Look at the next page, which is Shipcom 903. Is this the
9 introductory letter that you wrote to Mr. Wiseman?

10 A This is in an introductory -- excuse me -- introductory
11 letter that I sent to Mr. Wiseman. This entire body of this
12 email was actually provided to Shipcom by the VA project
13 staff. So I believe Bruce Henderson from the VA was actually
14 the guy that sent this entire template to us to send out to
15 everybody.

16 Q Okay. And this is a letter to give them an idea of
17 what's upcoming, is that right?

18 A Correct, yes.

19 Q Okay.

20 A And for them to distribute to their staff.

21 Q Okay. Let's go to the next page here. Logistics
22 training overview; is that right?

23 A Correct.

24 Q And we see on the lefthand side it has level one, level
25 two, level three and level four; is that right?

1 A Yes, yes.

2 Q And that's describing different levels of training for
3 these folks; isn't that accurate?

4 A Correct.

5 Q And then in the second column, you have a target audience
6 that describes basically which portions of the VA staff you
7 were targeting for that particular level of training; isn't
8 that true?

9 A Yes.

10 Q And then on the right hand side it gives sort of an
11 overview of what those different levels of training would
12 involve; is that right?

13 A That is correct.

14 Q I don't need to go into detail there, but if the jury
15 wants to look at that in their deliberations. Look at -- skip
16 two pages to Shipcom 906. And here we have a Heal You program
17 training overview display; is that right?

18 A Yes.

19 Q And it, again, shows different levels of training there
20 down the right hand side; is that right?

21 A That is correct.

22 Q And along the bottom we have -- it says, "Supply tech,
23 item manager, superuser, train the trainer" is that right?

24 A Correct.

25 Q And those were basically target audience of those

1 different types of training modules; is that true?

2 A Sure.

3 Q And all of these different boxes are titles of different
4 training modules that you, as trainers, would train on?

5 A Correct.

6 Q Is that true?

7 (Pause in the proceeding.)

8 Q Now when you were training these folks, you had to take
9 feedback from them, right, to try and figure out how things
10 could be improved wouldn't you?

11 A Correct.

12 Q And Shipcom didn't have in place any sort of formalized
13 feedback method? You sort of relied on your experience to do
14 that; isn't that true?

15 A Common decency, yes.

16 Q I'd like to look at Plaintiff's Exhibit Number 39. I
17 believe you looked at this on direct examination. This is
18 that February 7th -- February 4th email that you sent to
19 folks. Do you recognize that document?

20 A I do.

21 Q I'd like to first start with the third page -- which is
22 Shipcom 918 -- it's the email that you sent on February 2nd of
23 2015. And just so we can be clear about who these folks are
24 again, your sending this email to Hiten Patel, right?

25 A Yes.

1 Q And he was one of the Vice Presidents of the company?

2 A Yes.

3 Q And you were copying Jean-Paul Renard for one; is that
4 right?

5 A Yes.

6 Q And he was your boss; is that true?

7 A I don't know if that was there yet, so to the best of my
8 knowledge he was functioning as my manager at that point, yes.

9 Q Mr. Renard was a Vice President of the company?

10 A I can't remember his exact title, I'm sorry. He was up
11 there.

12 Q And Christopher Kehn is one of the Plaintiff's in the
13 lawsuit, right?

14 A Yes.

15 Q And then Steve Baczewski -- how do you say that?

16 A Baczewski.

17 Q Baczewski. Do you know who that is?

18 A I can't recall.

19 Q And you sent this email in order to provide some feedback
20 to these folks, right?

21 A Yeah, kind of, yeah.

22 Q Well, --

23 A I mean, really this is explaining my like hey by the way
24 this is what we're out here doing. So in case you need to
25 talk to anybody about why these trainers are around here on

1 your site, this is it.

2 Q Okay. Well you say there in the first line, "The
3 following information is meant for internal use only and
4 reflects some of the feedback from previously trained sites as
5 well as some personal opinions of mine." So, is that
6 accurate? Is that what that says?

7 A Yes, that is what that says.

8 Q So would you agree with it you were providing feedback to
9 your superiors based on previously trained sites?

10 A 100 percent.

11 Q Okay. You were also providing some of your personal
12 opinions; is that true?

13 A Absolutely.

14 Q Okay. One of those is there at the second paragraph. It
15 says, "We need to be firm on our agendas and schedules. The
16 level base training is written for a reason in that it will
17 provide for conceptual comprehension in a tear driven system
18 and breaks down as follows." Did I read that accurately?

19 A You did.

20 Q Okay, so you were trying to tell your bosses that we need
21 to be firm in our agendas for a particular reason, right?

22 A Yes.

23 Q Okay. And one of those reasons was you were having
24 trouble with some of the VA hospitals not abiding by those
25 agendas; isn't that true?

1 A Yes, that was happening.

2 Q And it was important that they abide by those agendas so
3 that you can get out the training that you needed to; is that
4 right?

5 A Yes, and also this -- we were following (indiscernible)
6 vision which was -- this is how we trained so this was our
7 job.

8 Q Okay. Let's jump down to the last full paragraph there
9 on this page. It says, "Next we need to pro-actively address
10 the fact that we are not training in a site-specific live
11 environment. This is a training server for task driven
12 learning modules." And it goes on. Did I read that
13 accurately?

14 A There is a training server, yes.

15 Q There is a training server for task driven learning
16 modules?

17 A Correct.

18 Q Okay. And so here the feedback you're providing to them
19 is that we're having some trouble with the VA hospitals
20 learning in a sort of testing environment as opposed to a live
21 environment; is that accurate?

22 A To the best of my recollection, yes.

23 Q Then you go on and you state at the last sentence there
24 on this page, "Prior to go-live, our goal in training for
25 Brett Hayden's team pass document is" and the next page there

1 at the top, it says, "Training Team Task. Ensure that VAMC
2 logistics and clinical staff receive personalized in-depth
3 training to best prepare logisticians for conversion to
4 CATAMARAN software and POU inventory management system.

5 "Provide classroom hands on and on-the-job training as
6 well as help to analyze and implement workflow solutions for
7 targeted VAMC staff utilizing CATAMARAN processes." Is that
8 right?

9 A That is what that says, yes.

10 Q And that was the goal of the trainers; isn't that true?

11 A Per Brett Hayden's document, yes.

12 Q And in fact, while you were on-site you were trying to
13 provide hands on training weren't you?

14 A Ideally, yes.

15 Q You were trying to provide on-the-job training, weren't
16 you?

17 A Trying to, yes.

18 Q And you were trying to analyze and implement workflow
19 solutions for the VAMC staff; is that true?

20 A We were trying to help to, yes.

21 Q Okay. And the next line there, or the next paragraph it
22 says, "Kehn and I have developed a training model that allows
23 the presenting central office approved training materials
24 developed jointly between Shipcom training and technical
25 writing teams and central office project management along with

1 allowing the end users to intentively function within the
2 training server and POC demo environments." Did I read that
3 accurately?

4 A You did.

5 Q And isn't it true that you and Mr. Kehn developed the
6 training?

7 A No. I did.

8 Q You developed the training model on your own?

9 A No. I shuffled around the slide deck. Kehn didn't have
10 anything to do with it is what I'm saying.

11 Q So what you wrote in this email to your superiors,
12 including a lot of vice presidents in the company, was
13 inaccurate then?

14 A In a really polite way, yeah.

15 Q Let's look back at the first page of the document then.
16 This is the email that you wrote on February 4th of 2015,
17 right?

18 A Yes.

19 Q Okay here you point out that you are attaching several
20 different documents to this email; is that right?

21 A Yes.

22 Q One of those -- the first bullet here in this document
23 indicates that you have an agenda. This is brand knew.
24 You-all are the first to see it. Is that right?

25 A Yes.

1 Q And this is an agenda that you came up with; is that
2 true?

3 A Yes.

4 Q Okay. And the idea here for this new agenda was to
5 confirm all classroom attendees ability to perform hands-on
6 and functions related to central office approved PowerPoints;
7 isn't that true?

8 A Yes.

9 Q Okay. And the second bullet here is referring to a
10 metrics that you had developed; is that true?

11 A Yeah, yes.

12 Q And this metrics was developed in response to one of your
13 superiors request after Coatesville; isn't that accurate?

14 A Yes, Brett Hayden.

15 Q And you were doing the -- you were creating these things
16 in order to improve the training process, weren't you?

17 A No, it was more like to make sure I was actually hitting
18 the things that the end-users would need to do. Like it
19 wasn't like a deliverable or anything. It's just -- okay,
20 they did all this stuff so I did a good job is kind of the
21 idea.

22 Q So if your job is to make sure that they can do what they
23 need to do at the end of the day, then those things help
24 you -- these things that you developed helped you do that;
25 isn't that accurate?

1 A Yeah, yes. Yeah.

2 Q Finally in this final bullet point, we talked about that
3 superuser agenda that you talked about on direct examination,
4 right?

5 A Yes.

6 Q And this is something that you indicate in this email
7 that you and Mr. Kehn came up with; isn't that accurate?

8 A That's what it says in the email, yes.

9 Q Is it accurate that Mr. Kehn and you came up with this
10 superuser training agenda?

11 A We bounced ideas around, yes.

12 Q Which resulted in the development in this agenda; is that
13 accurate?

14 A It resulted in the shuffled around slide deck, yes.

15 Q And you actually implemented this superuser training
16 agenda to some degree when you went to Clarksburg to try and
17 appease the VA; is that right?

18 A I am not going to lie. I can hardly remember Clarksburg.
19 I couldn't tell you because that was right at the end of my
20 sanity at that point and I could not tell you whether I -- to
21 the best of my knowledge I don't believe that I did this at
22 Clarksburg. I think I developed it at Clarksburg. I stayed
23 up all night in Clarksburg, but I don't specifically recall
24 doing this with end users.

25 Q Okay. Let's look at Defendant's Exhibit 40. Do you

1 recognize this email, sir?

2 A I do.

3 Q And the bottom half of this email is -- has a copy and
4 paste of a link message conversation that you were having with
5 JP Renaud; is that accurate?

6 A That's correct.

7 Q JP is a person we've already talked about who was your
8 superior; is that right?

9 A Yes.

10 Q And in that linked conversation with Mr. Renaud you're
11 pitching an idea for improving some of the processes that you
12 were using for training at these facilities; is that accurate?

13 A That is accurate, yes.

14 Q It was specifically about improving the functionality of
15 the test environment, right?

16 A I can't say that with certainty, I'm sorry. It was
17 improving something.

18 Q It certainly wasn't to harm the system, right?

19 A Absolutely not.

20 Q Okay. The idea was to improve it and you were sending
21 this to your superior to see if they would work on it, right?

22 A Correct.

23 Q Idea you came up with?

24 A Totally.

25 Q Okay. And you sent it to Mr. Kehn. Mr. Kehn responds he

1 thinks it's a brilliant idea; is that right?

2 A In so many words, yes.

3 Q Another one of these ideas that you were bouncing around
4 with Mr. Kehn; is that accurate?

5 A That is correct.

6 Q Now earlier during direct examination, you testified that
7 when you first started your employment with Shipcom you had
8 some ideas but they sort of fell on deaf ears. Is that an
9 accurate representation of your testimony?

10 A Yes.

11 Q Okay. Here you're sending these emails in January of
12 2015 and the prior emails that we just talked about in
13 February of 2015; is that accurate?

14 A That is accurate.

15 Q We're talking more than seven months into your
16 employment; isn't that true?

17 A Sure.

18 Q And you're still pitching ideas to Shipcom about how to
19 improve their processes; isn't that right?

20 A Seven months in, yes.

21 Q Even though your testimony is that your original ideas
22 just fell on deaf ears in the past?

23 A As did these, yes.

24 Q You also took part in training Shipcom employees
25 themselves; isn't that true?

1 A Correct.

2 Q Not just the VA hospital employees, but Shipcom employees
3 who were going to go out and had to understand how this stuff
4 worked, right?

5 A Correct, yes.

6 Q And you took part in a training that took occurred in
7 November or December of 2014; isn't that true?

8 A I cannot recall the date, I'm sorry.

9 Q Okay, but you did take part in it?

10 A I did.

11 Q And the idea there was to sort of bring Shipcom employees
12 up to speed on how the software was working; is that right?

13 A Correct.

14 Q And you were chosen as the one from the trainers who
15 would actually deliver that presentation for the trainers,
16 right?

17 A From the training group, yes.

18 Q Because you were the second trainer employed at Shipcom,
19 as far as you can recall, you took part in actually developing
20 the training program, didn't you?

21 A No.

22 Q Didn't take part in that? Okay. Let's look at
23 Defendant's Exhibit Number 69.

24 (Pause in the proceeding.)

25 Q Again, very light on this projector. You can look

1 at -- refer to your booklet there.

2 (Pause in the proceeding.)

3 Q Mr. Novick, this is a copy of your LinkedIn profile; is
4 that accurate?

5 A That is accurate.

6 Q And it's hard to read, but read along with me that
7 first -- that paragraph that we're sort of pulling out here on
8 the overhead projector and see if you can read that.

9 It says, "Skilled project manager with a strong
10 background in training who drives value for clients by
11 defining and executing a results oriented approach to solving
12 complex and technical business problems. Extensive knowledge
13 of aligning strategy, technology, process engineering/design
14 and data to achieve breakthrough success.

15 "Efficient team leader with strong executive presences
16 and the ability to communicate complex operational topics to
17 audiences of varying backgrounds." Did I read that
18 accurately?

19 A You did.

20 Q Okay. And is that an accurate description of you?

21 A I like to think so, yeah.

22 Q Let's look at the second page of the document, 1134. And
23 here you include some description of your employment with
24 Shipcom as a systems trainer, right?

25 A Yes.

1 Q I'd like to read this paragraph. It says, "Shipcom
2 Wireless provides software solutions based on automatic
3 identification and data collection, radio frequency
4 identification and enterprise mobility." Is that right?

5 A That is true.

6 Q Okay. The second paragraph here says, "Developed a
7 successful training program supporting nationwide
8 implementation of Shipcom proprietary software targeting
9 280,000 hospital employees across 152 unique sites.
10 Facilitated implementation and skill retention measurements
11 solutions with clients and end users by building client
12 relationships and working effectively with all internal
13 teams." Did I read that accurately?

14 A You did.

15 Q Is that an accurate description of what you did at
16 Shipcom?

17 A Safe for developing a training program, yes.

18 Q Okay. So when you put on your LinkedIn profile that you
19 developed their training program is not accurate?

20 A Sure. It got me a job.

21 Q Would that be a yes, sir?

22 A Yes, it's inaccurate.

23 Q You mentioned an Irfana Hussain, I believe, on direct
24 examination, right?

25 A Yes.

1 Q And she was a technical writer at Shipcom?

2 A I believe that was her title, yes.

3 Q What do technical writers do?

4 A I don't know the day-in-day-out, but to my knowledge
5 primarily is working on the slide decks and just documentation
6 like it's fed through the VA.

7 Q So you knew her from working at Shipcom?

8 A Yeah, yes.

9 Q Not anywhere else? Okay. Here on the second to last page
10 of this document -- it's Shipcom 1137 -- it looks like you
11 have a entry here from Irfana Hussain, do you see that?

12 A That's a LinkedIn recommendation, yes.

13 Q Right. And she rights here, "Justin is a fast learner
14 and knows how to find solutions to any challenge. He's also a
15 natural leader and knows how to take the lead and work well
16 with any type of group. I worked with him on creating
17 documents for training and he made sure that everyone on the
18 team was on the same page." Did I read that accurately?

19 A You did.

20 Q Would you agree with that assessment?

21 A Yeah.

22 MR. MACDOWALL: Your Honor, I'll pass the witness.

23 THE COURT: All right, redirect Mr. Slobin?

24 MR. SLOBIN: Yeah, I have a couple questions. Your
25 Honor, I'm going to put up Defendant's Exhibit 38.

1 (Pause in the proceeding.)

2 REDIRECT EXAMINATION OF JUSTIN ERIC NOVICK

3 BY MR. SLOBIN:

4 Q Mr. Novick, do you remember this exhibit?

5 A I do.

6 Q Okay. Who drafted this content?

7 A This is from -- to the best of my recollection this was
8 from Bruce Henderson from the VA project team.

9 Q Okay.

10 A Collaboratively with myself for sure.

11 Q Okay. And who asked you to send this document, Exhibit
12 38?

13 A I can't give you a specific name. I apologize. But not
14 myself.

15 Q Not yourself.

16 A No.

17 Q Okay. This is page 00904. Who created this content?
18 Let me ask you, did you create this content?

19 A No.

20 Q All right. Page 00905. Did you create this content?

21 A I do not believe so, no.

22 Q Page 00906. Did you create this content?

23 A Absolutely not.

24 Q What about 00907? Did you create this content?

25 A No.

1 Q 00908, did you create this content?

2 A No. No. This was the VA private team.

3 Q 00909, did you create this content?

4 A I did not.

5 Q Would you mind flipping through 00910 through --

6 A I'm so sorry, which document number was this?

7 Q So it's the same. I'm sorry. I'm looking at the bottom
8 of the pages.

9 THE COURT: Hand the witness Defendant's exhibit,
10 right here.

11 THE WITNESS: Thank you, Your Honor.

12 MR. SLOBIN: Your Honor, do you mind if I'm up here?

13 THE COURT: That's fine.

14 THE WITNESS: Thank you. Thank you, Your Honor.

15 BY MR. SLOBIN:

16 Q So look at those.

17 A Yes. Thank you.

18 Q As I was asking, Mr. Novick, look through 00910 through
19 the remainder of that document, 00915. Did you create any of
20 that content?

21 A No, sir I did not create any of this.

22 Q Okay. Let's look at Defendant's Exhibit Number 39.

23 (Pause in the proceeding.)

24 Q I just want to make sure I understand something. You see
25 this -- I didn't put it up. See this Exhibit, Defendant's

1 Exhibit 39?

2 A Yes.

3 Q What's the date that you said this?

4 A This is February 4th, of 2015.

5 Q Okay. And when did your employment end?

6 A I believe March 13th of 2015.

7 Q Okay. So you essentially sent this about a month
8 before --

9 A That's correct.

10 Q -- at the end of your employment?

11 A Yes.

12 Q And are you aware of, I don't know, other emails similar
13 to this where you're providing thoughts and inputs?

14 A Try me, yes, yes.

15 Q All right. Did they ever respond or agree to implement
16 anything that you provided to them?

17 A No, not that I know of. No.

18 Q All right. And I believe you said it fell on deaf ears
19 or something?

20 A Yes.

21 MR. SLOBIN: All right, Your Honor, I'll pass the
22 witness.

23 THE COURT: Anything else?

24 MR. MACDOWALL: Just briefly, Your Honor.

25 RECROSS-EXAMINATION OF JUSTIN ERIC NOVICK

1 BY MR. MACDOWALL:

2 Q Mr. Novick, all those documents that you just went over
3 in Defendant's 39, documents that you said you didn't create,
4 but they describe content that you did train on at these VA
5 hospitals; isn't that accurate?

6 A That is accurate, yes.

7 Q Training material that developed over time at Shipcom
8 that you had to learn and learn how to communicate
9 effectively; isn't that accurate?

10 A That is accurate.

11 Q And you just testified that you sent that email in
12 February of 2015 right before you left Shipcom in March of
13 that year; isn't that true?

14 A That is true.

15 Q So you were still coming up with ideas to inform Shipcom
16 of to try to and improve processes right before you left your
17 employment; isn't that true?

18 A Was trying to, yes.

19 Q And that's despite the fact that you've testified that
20 the work that you were doing was nauseatingly mundane; isn't
21 that true?

22 A Yes.

23 Q Okay.

24 MR. MACDOWALL: No further questions.

25 MR. SLOBIN: One final question, Your Honor.

1 FURTHER REDIRECT EXAMINATION OF JUSTIN ERIC NOVICK

2 BY MR. SLOBIN:

3 Q Is the reason that you were coming up with new ideas was
4 because it was nauseatingly mundane; is that correct?

5 A That is absolutely correct.

6 Q Okay.

7 MR. SLOBIN: Thank you, Your Honor.

8 THE COURT: All right, you may be excused.

9 THE WITNESS: Thank you, Your Honor.

10 (Witness steps down.)

11 THE COURT: Mr. Slobin, do you have your next
12 witness? Or Mr. Sinkule?

13 MR. SINKULE: Plaintiff's call Zahid Islam to the
14 stand.

15 THE COURT: Okay. Let me ask the jury if they would
16 like an afternoon break? Yes. All right we'll take a -- can
17 we do a 10-minute break?

18 All right, 10-minute break.

19 COURTROOM CLERK: All rise.

20 (Jury exits courtroom at 2:07 p.m.)

21 THE COURT: Okay, quick break.

22 (Recess taken from 2:07 p.m. to 2:16 p.m.)

23 (Audio begins abruptly.)

24 MR. SLOBIN: -- so I just want it look it up. I'm
25 happy to do it while we're in court, but I just wondering what

1 you're thinking. We've got two witnesses left today. I have
2 a feeling this time we'll finish with them, or come close. So
3 I wanted to get your thoughts on --

4 THE COURT: You think you'll finish your case today.

5 MR. SLOBIN: I think that if Mr. Notestine doesn't
6 ask any questions, or very general questions -- no --

7 (Laughter)

8 MR. NOTESTINE: I only have two questions.

9 THE COURT: Okay.

10 MR. SLOBIN: I think if -- at 2:30, at this -- I
11 think that we make there. It'll be close.

12 THE COURT: Okay.

13 MR. SLOBIN: For sure.

14 THE COURT: Well, my thought was we do the charge
15 conference after 5:00.

16 MR. SLOBIN: Okay.

17 THE COURT: So that we're ready tomorrow as soon as
18 your case -- you, you know, put on your case --

19 MR. NOTESTINE: We just have one witness.

20 THE COURT: Yeah, so --

21 MR. NOTESTINE: Yeah, so I mean we should -- I mean
22 depending on when he gets done, we should be done by noon
23 tomorrow at the latest.

24 THE COURT: Okay. And I'm happy to give you a few
25 minutes between the time the jury leaves and we start the

1 conference to look over -- I mean --

2 MR. SLOBIN: Okay.

3 THE COURT: -- is 15 minutes enough or do you need
4 more time than that?

5 MR. SLOBIN: Yeah, so I may step out for a little
6 bit to do some research that would think that they will add
7 in, but this is included in the questions, so.

8 THE COURT: All right. That's fine. All right.

9 MR. SINKULE: Do you want the witness in the
10 stand --

11 THE COURT: Yeah --

12 MR. SINKULE: -- or should we wait?

13 THE COURT: -- we'll go ahead and --

14 MR. SINKULE: Okay.

15 THE COURT: -- swear him and get him seated.

16 (Witness sworn.)

17 UNIDENTIFIED SPEAKER: Your Honor --

18 THE COURT: Let me ask one more -- well, on the
19 issue of the charge conference, would you all prefer to do it
20 in the morning, but then if we start --

21 MR. SLOBIN: I'd prefer to do it tonight.

22 MR. NOTESTINE: I'd rather do it tonight too.

23 THE COURT: Okay.

24 MR. SLOBIN: Yeah, I just want to -- I'll be fine.
25 I'll step out when we --

1 THE COURT: Okay.

2 MR. NOTESTINE: We have Reddy kind of waiting. I
3 mean do you think we're going to get to him today? Can I tell
4 him to leave or --

5 MR. SLOBIN: I really don't know how long these --

6 MR. NOTESTINE: Okay.

7 MR. SLOBIN: -- these witnesses are going to go.

8 MR. NOTESTINE: We'll wait.

9 MR. SLOBIN: Yeah, I wouldn't -- I wouldn't have
10 any --

11 MR. NOTESTINE: I think it's pretty unlikely we'll
12 get to him but --

13 THE COURT: I think it's unlikely too.

14 MR. SLOBIN: Sure.

15 THE COURT: Because you have two witnesses and we
16 have two and half hours.

17 MR. SLOBIN: I'd say you're probably right, but --
18 and if we end early then we can just work a little bit on the
19 charge before --

20 THE COURT: The jury probably won't mind going home
21 a bit early, so that's fine.

22 MR. NOTESTINE: Yeah, so can I go ahead and tell
23 Mr. Rangis (phonetic) --

24 THE COURT: Yeah.

25 MR. NOTESTINE: -- to come tomorrow morning?

1 THE COURT: Yes. Okay. Do you want me to let the
2 jury in before you leave, or after?

3 MR. SLOBIN: I'll leave first.

4 THE COURT: Okay.

5 MR. SLOBIN: Thanks.

6 THE COURT: Okay. We're ready.

7 THE MARSHAL: Okay?

8 THE COURT: Yes.

9 THE CLERK: All rise for the jury.

10 (Jury enters courtroom at 2:19 p.m.)

11 THE COURT: Be seated. All right. You may proceed,
12 Mr. Sinkule.

13 MR. SINKULE: Thank you. Plaintiffs call Zahid
14 Islam to the stand.

15 THE COURT: Yes, Mr. Islam is on the stand. Have
16 you been sworn, Mr. Islam?

17 THE WITNESS: Yes. Yes, Your Honor.

18 THE COURT: All right. Proceed.

19 DIRECT EXAMINATION OF ZAHID ISLAM

20 BY MR. SINKULE:

21 Q Hi there. Good afternoon.

22 A Good afternoon.

23 Q Can you please state your full name?

24 A Zahid Islam.

25 Q And, Mr. Islam, where do you currently live?

1 A Orlando, Florida.

2 Q How long have you lived there in Florida?

3 A In Florida the past 16 months, and prior to Shipcom six
4 years.

5 Q Okay. And are you from there -- I guess you're not from
6 there originally it doesn't sound like. Right?

7 A No, I'm from the Dallas area.

8 Q Okay. And --

9 A Allen.

10 Q I'm sorry.

11 A Allen.

12 Q Allen. Okay. And how long have you -- I'm sorry, how
13 did you end up in Florida?

14 A Went to college in Tallahassee.

15 Q And where did you go to school there?

16 A Florida State.

17 Q All right. Did you obtain a degree at Florida State?

18 A Yes. I got a bachelor of science in finance and another
19 in real estate, the bachelor in 2011.

20 Q All right. And are you familiar with Shipcom?

21 A Yes.

22 Q And how so?

23 A I worked for them between July 2014 and March -- no,
24 sorry, not March, April 2015.

25 Q Okay. And how did you come to apply for a job at

1 Shipcom?

2 A So I had actually met the woman who was either the CFO,
3 or as they're saying, the VP of Finance. I'm networking with
4 them in Houston, and I was approaching a plethora of people
5 because I was looking for something specific in audit, and I
6 had asked her -- I told her what I was wanting and she told me
7 that should didn't have exactly an audit position, but there
8 was a need in something within the realm of accounting,
9 accounts payable, that could help me get to -- would be a good
10 starting point for my trajectory into internal audit and fraud
11 examination later.

12 Q Okay. And then I take it you applied for the job at
13 Shipcom?

14 A Correct.

15 Q And what job was that specifically that you applied for,
16 if you recall?

17 A Accounts Payable Analyst.

18 Q Okay. Well, let's take a look at Plaintiff's Exhibit
19 Number 17.

20 (Plaintiff's Exhibit No. 17 identified.)

21 BY MR. SINKULE:

22 Q Have you seen this document before today?

23 A Yes.

24 Q And what is this?

25 A It's the application that was relayed to me.

1 Q Okay. And if you look down on the left hand side, the
2 position desired, position applied for it says, Accounts
3 Payable here. Do you see that?

4 A Yes.

5 Q And did you type that in or did someone else type that
6 in?

7 A I don't recollect. I think -- I know my handwriting's
8 there, but the --

9 Q This is your handwriting?

10 A Huh?

11 Q This is your handwriting?

12 A Yes.

13 Q Okay. But in any event Accounts Payable Associate is the
14 position that was applied for. Correct?

15 A Correct.

16 Q And I assume, sir, that you interviewed for the position
17 you applied for. Is that right?

18 A Yes.

19 Q And tell us about the interview or interviews you had in
20 connection with applying for that position.

21 A So one interview I had was with somebody who went by MT,
22 who's here today, Mustafa is his first name, and he -- I
23 believe he was the VP of the company, and he was an executive
24 and he asked very broadly about my educational background, why
25 I wanted to work for Shipcom, what I was looking for. He's

1 essentially gauging me, and I imagine, you know, whether or
2 not he liked my personality, and he said that there was, you
3 know, a position within Finance that they sorely needed to
4 fill, which is something that the VP of Finance, when I met
5 her at the network convention she had said, that's the exact
6 claim that there was something there that they needed to fill
7 within Accounts Payable.

8 Q And just so I'm clear, had you already applied for the
9 position by the time you interviewed with MT?

10 A I believe so.

11 Q Okay. And so was the interview with MT the first
12 interview that you had?

13 A If my memory serves me, it was the first or second.

14 Q Okay. Well, in addition to the interview with MT, it
15 sounds as though there was at least another interview. Is
16 that right?

17 A Yes, there were multiple.

18 Q Okay. Tell us about those.

19 A Another interview I had was with the VP of Finance/CFO,
20 Rene Carnes, alongside somebody named Michael, at the time he
21 was the Accounting Manager. And they really got into the
22 minutia of the role, and they said, for starters, they were
23 elucidating the ERP software which was the VA's -- they
24 claimed the VA's preferred ERP software, Delta TCS Premier
25 (phonetic), which both acknowledged was very antiquated and

1 archaic and gave them difficulty. It lent itself to a lot of
2 manual processes, but they were saying that that's something
3 that they're -- the team is assessing together. And they were
4 also saying that they need to fill an accounts payable
5 position because the company had grown astronomically after
6 corralling the VA contract and they needed somebody to -- they
7 just needed somebody to be there in the Accounts Payable
8 position.

9 Q And I want to break -- one thing you said now just a
10 little bit, because you're speaking about something that I
11 don't know a lot about. And you said ERP software. So can
12 you tell us a little bit about what ERP software is? Is that
13 an acronym? It sounds like it stands for something.

14 A Enterprise Resource Planning.

15 Q So what is the ERP software, what does it do, what's it
16 for?

17 A Well, it's similar to Oracle, it's an SAP software and
18 that's in effect, and it's supposed to streamline and automate
19 so many functions within Finance and Accounting. For example
20 it should have ideally like within Accounts Payable the
21 functionality to identify, to book payments, and able to post
22 journal entries, things of that nature automatically.

23 Q Okay.

24 A Along side being a repository for --

25 Q A repository for what?

1 A Like invoices, et cetera.

2 Q Okay. So in addition to the interviews that you've
3 mentioned, were there any others that you had?

4 A Yes.

5 Q Tell us about those, please.

6 A I had another with the CEO himself and the VP of Finance
7 was in the room as well. And he asked just very broadly why I
8 wanted to work for Shipcom, what do I bring to the table, and
9 that he just was saying that -- I mean, you know, people need
10 you, he's expecting people to come in excited, full of vigor,
11 you know, it's an exciting time, the company just corralled a
12 major contract and he was also really honing in -- he asked me
13 about my educational background, he asked my GPA and he was
14 really honing in on that. And the VP of Finance was just
15 saying that, you know, He's very academic. And that was it,
16 it was just very high level and broad.

17 Q Okay. And so were there any other interviews besides the
18 ones you've already mentioned?

19 A There was another one with another executive, I think his
20 name was Ray, although this might have been after I had gotten
21 the offer, so I'm not sure about -- I'm trying to remember
22 because I know at the deposition there was -- I remembered it
23 as an interview but -- technically it was but I don't if it --
24 would categorize it as one because I don't know if it was
25 before or after the offer.

1 But he was just very much crammed with pomp and
2 circumstance, very excited about the VA contract and that the
3 company was staffing up and growing, and he did make the
4 comment that -- he said, I know you're going to be -- you had
5 applied to something in finance doing accounts payable and he
6 asked me, Is that really what you want to do? And I told him,
7 I mean that's a starting point to where I want to get to. And
8 then he said something along the lines of, If you don't wind
9 up liking it, then you can come on over and work for me.

10 And then at the time I could comprehend that because
11 my understanding was he was an engineer and I didn't know
12 what -- like as far as working with him like what I would do,
13 which was in alignment with my -- with what I wanted to do
14 with my educational background and experiences.

15 Q Do you have any educational background in engineering?

16 A No.

17 Q Okay. And so during any of these interviews was there a
18 discussion of what you would be doing if you got the job?

19 A Yes, when I --

20 Q High level or low level?

21 A Well, when I had the interview, I would say all throughout
22 it was all focused on high level based on knowledge that
23 accounts payable function had to be filled in. And then the
24 interview with the VP of Finance and Michael, the Accounting
25 Manager at the time, they really delved into the minutia and

1 the details of, you know, the challenges of they need more
2 structure but they need somebody actually just reducing the
3 backlog, getting the payables up to speed. And then they did
4 indicate that, you know, if somebody could come in and that
5 then things would be carried out scrupulously.

6 Q Okay. And after the series of interviews you were
7 offered the position. Is that right?

8 A Yes.

9 Q Okay. And you accepted?

10 A Correct.

11 Q All right. Let's look at Plaintiff's Exhibit 18.

12 (Plaintiff's Exhibit No. 18 identified.)

13 BY MR. SINKULE:

14 Q Mr. Islam, have you seen this document before?

15 A Yes, that's the offer letter.

16 Q Okay. And if we look at the first section, the Number 1,
17 it says, Title, Duties, Responsibilities and Performance
18 Measurements. Do you see that?

19 A Yes.

20 Q It says, Your position -- just -- well, that your
21 position will be Financial Analyst with effect from July 18,
22 2014. You shall perform all duties, services and acts as
23 directed by your supervisor. Did I read that correctly?

24 A Correct.

25 Q Okay. So this document mentions a different title, it

1 mentions the title of Financial Analyst, and in your
2 application there was the title you applied for of Accounts
3 Payable. Is there a difference between the two positions to
4 your knowledge?

5 A Pretty big distinction between the two and it's worth
6 mentioning that I did approach Rene about this, and I think
7 somebody -- I think it was just Rene, but I told her that -- I
8 mean the offer letter says Financial Analyst. I'm not going
9 to be doing any sort of forecasting or financial modeling or
10 budgeting, am I, because from what I'm seeing on the offer
11 letter, everything is going to Accounts Payable, invoices,
12 that of an AP clerk. So to me in my mind it was a misnomer.

13 Q Okay.

14 A But it just -- it stood that way.

15 Q And when you asked her this question what was her answer?

16 A She said she saw it and she was surprised by that as
17 well, but she said that maybe down the line like after I had
18 helped clean up the AP mess and just work on bringing the
19 payables up to speed I could potentially pivot, or move up to
20 something of a Financial Analyst if something like that were
21 to open. But as it stood we were just going to stay with that
22 position, but it was kind of innocuous to me at them time.

23 Q Okay. And where did you end up working for Shipcom?

24 A Within the Finance Department, it was on the fifth floor
25 at the corporate office in Houston.

1 Q Okay. And so we've heard a lot of testimony yesterday
2 and today, especially today, about the other Plaintiffs
3 traveling from site-to-site. Was that the same sort of setup
4 that you had?

5 A No.

6 Q Okay. So you mentioned you worked in Houston. Did you
7 work anywhere other than in the Houston office for Shipcom?

8 A No.

9 Q All right. And did you have an office at Shipcom?

10 A No.

11 Q Okay. Where were you situated within the building?

12 A In a cubicle.

13 Q Okay. You mentioned that you -- I believe you mentioned
14 you reported to Ms. Carnes. Is that correct?

15 A Correct, she was -- on paper that she is who I was
16 reporting to, but we had a couple of leads, we had a
17 contractor who I believe was as Senior Accountant, his name
18 was Tim Shaffer (phonetic). And prior to him there was
19 another contractor named Rebecca who was re-training me on
20 everything because I -- outside theoretical education that I
21 had from FSU along the lines of accounts payable and those
22 processes I didn't have on-the-job exposure to and so Rebecca
23 was training me.

24 And then she left, Tim was there, and then they
25 brought in Michael I believe, the Accounting Manager, who I

1 referred in an interview. He left the day I was hired. So
2 they brought in somebody at some point shortly thereafter I
3 believe named Brandy Lockwin Moore (phonetic). She was the
4 Accounting Manager. So I had a couple of leads. There were
5 multiple layers of authority above me that I was reporting to,
6 who were coaching me. I didn't have any direct reports and
7 ultimately I was also reporting to Rene, VP of Finance.

8 Q Okay. So you mentioned Tim and Rebecca were contractors.
9 Tim's last name, do you recall?

10 A Shaffer, Shofer (phonetic).

11 Q Okay. And you may have said that. And then Rebecca,
12 what is her last name?

13 A I don't remember.

14 Q All right. And you said they were contractors. Does
15 that mean they did not -- they were not considered employees
16 of Shipcom?

17 A Correct, they were 1099 workers.

18 Q Okay. And tell us again, Mr. Shaffer, what was his --
19 did he have a title of any sort even though he was a
20 contractor?

21 A I believe he was essentially working as a Senior
22 Accountant, I think that's what they had referred to him as,
23 because he was the one really doing the reconciliations
24 between the cash account and the bank statements, and just
25 making sense out of a suspense account that they had, which to

1 dispel some light, this suspense account was supposed to be a
2 temporary measure where you have unclassified credits,
3 unclassified debits. But they didn't -- they couldn't make an
4 sense of the amounts and the invoices that were there because
5 there were so many invoices that were lost or misplaced, there
6 are hard copies and that's why they brought me in, to
7 basically find those invoices, scan them, and anyway, got off
8 topic.

9 Q We're going to -- yeah, we're going to get into your
10 duties in just a minute, but so we were talking about
11 Mr. Shaffer, you said he was more acting sort of as Senior
12 Accountant. What about Rebecca, do you know what -- did she
13 have a title or was she sort of acting in a role?

14 A It was the same as his, they were basically in the
15 same -- at the same level.

16 Q Okay. And then I know that you said later on a lady by
17 the name of Brandy Moore joined the company. Is that right?

18 A Yes.

19 Q And did Brandy join the company as an employee of
20 Shipcom?

21 A Correct.

22 Q And what was her role within the company?

23 A Accounting Manager.

24 Q Okay. All right. And it's your testimony as I
25 understand it that you reported, or assisted Mr. Shaffer,

1 Rebecca and Ms. Moore during your employment with Shipcom.

2 A Correct.

3 Q Okay. Did you and Ms. Carnes -- I know you said you
4 reported to Ms. Carnes on paper directly. Correct?

5 A Yes.

6 Q Okay. And did you also do some work with her in your
7 position?

8 A Yes, she would ask me for weekly updates and some of the
9 goals that we have usually at the start of each week,
10 sometimes it would be like biweekly, but I would say it was
11 mostly weekly that we would meet. And again, I was a raw -- I
12 came in with fresh eyes not having any exposure to this and
13 very green, so she I mean was just trying to do whatever --
14 because people were juggling a plethora of duties. It was
15 very much a start-up environment so she wanted to make sure
16 that I was getting ample guidance.

17 Q Did you work with Ms. Carnes the entire time you worked
18 for Shipcom?

19 A Eight of the nine months. My final month there there
20 was -- they brought in another person to fill in for Rene.

21 Q Okay. And you say fill in for Rene. Who was that
22 person?

23 A Her name was Shuba (phonetic), something with an I.
24 Yeah, her name was Shuba.

25 Q And was -- did Shuba take the place of Ms. Carnes?

1 A Right.

2 Q Okay. So did you then begin reporting to Shuba?

3 A Yes.

4 Q All right. So let's talk about your duties. You started
5 going into a couple of them, but just tell the ladies and
6 gentlemen of the jury what it was that you were doing for
7 Shipcom in the -- in your position.

8 A The Billing Department essentially, so just receiving
9 invoices and bills from the vendors, also making -- just
10 receiving other information from the vendors like 1099 forms,
11 making sure that these are authorized vendors and suppliers,
12 maybe just recording the transactions, recording the invoices
13 and just kind of an -- I'm surprised that there were just
14 stacks of invoices, hard copies laying around. I just had
15 them, I wasn't receiving for several months physical hard copy
16 invoices.

17 I had a trusty friend that was letter opener that I
18 used often just to -- it was very archaic, I mean I was
19 getting mail, mailed invoices, it wasn't electronic, and the
20 finance team under the guidance of Rene we had decided to work
21 with the IT team on the 6th floor to establish a vendor
22 portal. Now the IT team would establish the vendor portal,
23 but we were encouraging them to do so as a proprietary portal
24 so that once all the invoices were scanned we could then have
25 some kind of paper trail and then audit the whole process in

1 the event the federal government auditors would examine us.

2 But so there was that, just recording transactions.
3 It was just a lot of drudgery between the scanning. Just
4 really looking at if -- again, because Dowltec (phonetic)
5 didn't have a feature where it could capture the payments, I
6 had to look to see if there were duplicate payments in there,
7 making sure that we weren't being over-charged or -- also
8 making sure that the payments that we were sending that are
9 authorized, getting approval from just across the board from
10 every department, from every person.

11 I could -- I did not have the latitude or the
12 autonomy to just pitch out payments. I had to literally go to
13 business process owners, whether it was the supply chain folks,
14 the engineers, upstairs, whatever the case may be I had to get
15 approval from them. And at the same time I was taking calls
16 from -- really from the first week that I started, from very
17 irate customers, meaning my customers, the vendors, the
18 suppliers as soon as I started. I mean I was the point of
19 contact so they typically were livid, but, you know, they
20 weren't getting paid, so many days had gone by, so almost
21 routinely they were -- that was, you know, somebody putting on
22 a conniption, but --

23 Q So how often were you having to make -- take calls or
24 make these calls to the vendors? Was it daily, was it weekly?

25 A Probably every other day.

1 Q Okay.

2 A But most of -- for the most part the first -- I don't
3 remember how long Rebecca was there, I know she was there for
4 a few months, she was really coaching me on what an AP person
5 does, just showing me the ropes, what I need to do, the
6 importance of getting the invoices handed in, so everyone has
7 a clear visibility of where they are and just a clear
8 visibility of the cash flow in the company and getting them
9 locked in the system. So she was really training me as far as
10 scanning them in, following a really -- they had like a
11 preferred naming convention for naming the piles of the
12 invoices.

13 So there was just a lot of training from her
14 efforts, alongside her -- alongside somebody from Procurement
15 named Nancy who was telling me how to deal with vendors. So I
16 was really getting guidance from just across the board because
17 I was very raw coming in with fresh eyes, they were just
18 telling me, Don't take it personally, just be who you are,
19 just be very cordial and try to placate their situation, try
20 to mend the fence with them because up until that point they
21 were getting disregarded.

22 Q You testified a moment ago that you were assisting at
23 times Mr. Shaffer and Rebecca. What types of issues or
24 responsibilities were you assisting those two people on?

25 A Well, they were working on -- their focus I believe was

1 on reconciling the cash account with bank statements, and they
2 would convene with her -- they would convene with me often and
3 just give me pointers on when I was to meet with the lady who
4 was actually sending out the payments to the vendors, whether
5 it was through wire transfers or signing checks, whatever the
6 case may be. Just really coaching me on what to say and --
7 because it was a little intimidating as far as who this
8 particular person was, and she was really -- but so they would
9 really coach me on that.

10 And they would ask me specific questions on the
11 invoices, procurement and what else, so it was all very inter-
12 dependent, but the leads would ask me to double-check the
13 invoices with the purchase orders and the purchase order
14 was -- is basically like the first official offer from the
15 buyer to seller that delineates the terms of the arrangement
16 whether -- like the quantities and the price, so they wanted
17 me to make sure that those matched, like the invoices matched
18 the POs.

19 Q All right. Let's take a look at Plaintiff's Exhibit 19.

20 (Plaintiff's Exhibit No. 19 identified.)

21 BY MR. SINKULE:

22 Q Have you seen this document before, Mr. Islam?

23 A Yes, I saw it in the deposition.

24 Q Okay. And did you ever see this document when you were
25 employed by Shipcom?

1 A No, but we sell -- but --

2 Q Okay. So this, it says it is a -- well, at the top it
3 says, Position: Accounts Payable Analyst. Do you see that?

4 A Yes.

5 Q Okay. And let's just take a look at some of the content
6 here. So if we look at the first paragraph it says, The
7 Accounts Payable Analyst, AP Analyst, compiles and maintains
8 accounts payable records. Is that something you did in your
9 position with Shipcom?

10 A Yes.

11 Q It goes on to say, The AP Analyst ensures all
12 transactions are complete and there are no gaps in the process
13 or documentation. If there are any gaps, the AP Analyst
14 should be able to act independently and ensure requisite steps
15 are taken to fill in and missing document or process. Is that
16 something that you did in your position?

17 A Yes, for the most part. But at the same time they were
18 independent, I mean, again, I was getting tremendous guidance,
19 like whenever -- you know, while everyone is busy -- I mean
20 their -- part of their job was to train me, so whatever
21 training I got from them. They would coach me on that, so as
22 far as independence, I mean I would say it was adequate, but
23 it wasn't -- it's not like I was, you know, completely acting
24 by myself, or completely independently.

25 Q Okay. And what I've heard you testify to so far is

1 that -- I haven't heard you say anything about independence so
2 far. I've heard you to say that you'd been -- you were
3 assisting people, Mr. Shaffer and Rebecca. Is that accurate?

4 A Yes.

5 Q Okay. Let's look at the last sentence in this first
6 paragraph. It says, The incumbent will be an individual
7 contributor running and managing the AP function. Is that
8 something that you did?

9 A Yeah, I mean essentially I was the AP person.

10 Q Did you run and manage the AP function?

11 A I don't know about managing, I mean I was really being
12 guided and I would often defer to the leads and just convened
13 with Rene as well. But at some point, I would say late in my
14 short stint with Shipcom, again, I was also -- I mean I wasn't
15 getting as much training, but I wouldn't say I was -- I mean I
16 was carrying out the AP Clerk tasks essentially.

17 Q Let's look down below in the next section,
18 Responsibilities and Duties. Let's just look at some of these
19 bullet points. The first bullet point says, Compiles,
20 processes and maintains accounts payable records. Is that
21 something you did in your position?

22 A Yes.

23 Q The next bullet point, Verify approval on all invoices
24 and check requests.

25 A Absolutely, every day.

1 Q Okay. And what does that mean to verify approval on all
2 invoices and check requests?

3 A Just ensure that the invoices that we're going to pay are
4 authorized and these aren't going to turn out to be
5 unauthorized disbursements to the wrong vendors, so I would
6 have to meet with folks across the board, across the company
7 both meeting at the Houston office and just meet with them and
8 say, hey, like are we authorized to pay these folks, are you
9 familiar with these charges, and things of that nature, so I
10 would -- again, like I couldn't just -- you know, I don't
11 know, you know, just send out a payment.

12 Q So were you approving the invoices and check requests?

13 A Was I approving them?

14 A Yes, were you doing that in your position?

15 A No, I was retrieving -- I was gathering approval from the
16 necessary ones.

17 Q Okay. Let's look at the next bullet, it says, Coding
18 invoice.

19 A Yes, we had to code counts, travel counts, a cheat sheet
20 that I remember Rebecca gave me early on that I don't know if
21 the former Accounting Manager put together, but it's something
22 that I adhered to and it was simply whatever the nature of the
23 work was as it pertains to what we're being billed for, I
24 would correlate it with that code. It was just simply
25 matching.

1 Q The next bullet point reads, Able to prepare and process
2 checks for multi-companies. Did you do that in your position?

3 A Yes, that simply just means that I was being sent the
4 invoices and I was opening them and logging them.

5 Q Okay. And what does process checks mean?

6 A Well, when I say -- when I see process checks that is I
7 think of looking at the checks and -- or the bills rather and
8 juxtaposing that with what's on the purchase order and then
9 just recording the transaction in the system.

10 Q Were you writing the checks?

11 A No, I was not writing the checks.

12 Q All right. The next bullet point says, Update and
13 maintain vendor database. Is that something you did in your
14 position with Shipcom?

15 A I think that's referring to the vendor master file, that
16 was already built in to Deltek and I would update it.

17 Q Okay. The next bullet, Able to process and enter 200 to
18 300 invoices per week. Is that something you did?

19 A I wouldn't say it was weekly, it was probably more
20 biweekly or monthly because we -- man, that's a lot, at least
21 when I was working it was. It heavy volume but that -- it was
22 not weekly, it was more so biweekly, monthly.

23 Q Okay. The next bullet point reads, Audits and verifies
24 expenses reports. Did you do any auditing from your position?

25 A No, I was not an auditor.

1 Q Okay. Did you do any verifying of expenses reports?

2 A Expense reports, no. I believe that's something that
3 Tim, I'm not so sure about Brandy, but I know the contractors,
4 they were working on the expense reports alongside the
5 reconciliations, and if they wanted to pull me in and just
6 look at a couple of things or assist them, then I would assist
7 them. But while I was working, I wasn't -- in terms of
8 auditing I was -- you know, they -- like I said, I was told
9 that they didn't have an audit position. So I was not
10 auditing, and I was not working with the expense reports.

11 Q Okay. The next bullet reads, Reconciles vendor
12 statements. Is that something you did in your position?

13 A No, that's something that really Tim was doing for the
14 most part, and if he needed assistance or something along the
15 lines of smashing things from an invoice or just clarifying
16 things while he's looking at the vendor statements, I was just
17 giving some clarity as far as if he had specific questions
18 about some of those charges or on specific invoices. But I
19 wasn't doing the actual reconciliation.

20 Q Okay. The next bullet point says, Ability to process and
21 follow up on rush items. Is that --

22 A Yes.

23 Q -- something that --

24 A Yes.

25 Q Okay. Can you give us an example, what is a rush item

1 that you might have followed up on and processed.

2 A Well, the first thing that comes to mind is, and this was
3 very befuddling, the person was sending out the wire payments
4 and just writing the checks and sending out the payments to
5 the vendors. Sometimes she would just -- often she would just
6 run by my cubicle, and be like: We need this person to get
7 paid ASAP, record the transaction, code it, have it ready to
8 go for me.

9 And it just put me in a really weird position
10 because I didn't have the time to digest what was going on or
11 if this was authorized. So I would have to -- you know,
12 initially I was just following directives but it was something
13 where I would defer to the leads, to Tim and also Brandy, and
14 Rebecca early on, and we would just say, Hey, on the breaks,
15 we need to actually examine what's going on here. And so
16 that's what comes to mind when I think of rush items. And
17 then alongside it, just taking calls from vendors and them
18 asking for like specific updates at a moment's notice.

19 Q All right. The next bullet point reads, Maintains
20 account payable files. Is that something you did in your
21 position?

22 A Yes.

23 Q The next bullet, 1099 preparation. Is that something
24 else you did?

25 A That goes back to updating and maintaining the vendor

1 database. So that's just retrieving -- not retrieving, just
2 gathering 1099 forms from the vendors and just logging it.
3 That's all under the dominion of an Accounts Payable Clerk.

4 Q Okay. And the last bullet, Special projects as assigned,
5 it's kind of broad. And did you work on additional projects
6 as needed?

7 A Well, there was one assignment that Rene, my -- the VP of
8 Finance, she had encouraged me to get together -- I mean this
9 was after I approached her about certain complaints on lack of
10 structure throughout the company and just very unscrupulous
11 regard for what we were trying to do in Finance. So she asked
12 me to put together a policy and procedure and I had various --
13 I had a few specific complaints and at her behest she just
14 said, Hey, suck it up, it's -- any change you seek, put
15 together -- if you really want to impress the folks here,
16 then, you know, just put together a policy and procedures from
17 what you've learned.

18 And by that time I was doing some side reading on
19 audit and insurance at home and -- because that's where my
20 interest lied, and in this case on what I had gathered there
21 and from my experiences late in the year, this was December
22 2014, I had drafted a policy and procedure and it went through
23 a couple of iterations.

24 Q Okay. And how long did it take you to put the policy and
25 procedure together that Ms. Carnes asked you to put together?

1 A So it took a couple of days, not the entire day each day,
2 but it wasn't -- I was very happy with it, but again, it was a
3 couple of days. To me that was very much a one-off. It
4 wasn't what my job was predicated on, so in the context of
5 nine months of working there, I worked on that for about 32
6 days.

7 Q Okay. Mr. Islam, were there other individuals at Shipcom
8 who were working in the same position that you were in?

9 A No.

10 Q And did you have the same job at Shipcom throughout your
11 employment there?

12 A Correct.

13 Q And did you have the same job duties the entire time you
14 worked for Shipcom?

15 A for the most part up until the one-off policy and
16 procedure that I was encouraged to assemble.

17 Q Okay. What would you say your primary job duty for
18 Shipcom was?

19 A Reducing the backlog of invoices and getting the payables
20 up to speed.

21 Q Okay. Did you supervise anyone at Shipcom?

22 A No.

23 Q All right. And just generally speaking, what was your
24 work schedule like at Shipcom?

25 A Well, I mean as I -- early on as I understood it, it

1 should have been 8:00 to 5:00 according to the application,
2 but quickly found out that that wasn't the case. And I had to
3 come into work on weekends because to give me some perspective
4 I had to find stacks of invoices, hard copies that were
5 printed out that were neglected for all intents and purposes
6 and scan them and at the same time simultaneously be expected
7 to process invoices that were coming in on a daily basis. So
8 it was an uphill battle from the outset.

9 Q And did you ever complain to anyone at Shipcom about your
10 work schedule?

11 A Yes.

12 Q To whom did you complain?

13 A The VP of Finance, Rene, a man in this room, Nakul
14 Goenka, and somebody else, I think he name was Erfan Chadbury
15 (phonetic).

16 Q Okay. And just what was -- in general what was the
17 nature of your complaint to those three individuals?

18 A Attrition, atrophy, burnout, feeling misled as far as my
19 understanding of -- I mean I was very much looking forward to
20 learning as much as I could and coming and trying to help a
21 big problem. But I just felt misled in terms of like I didn't
22 think that it would be like this where I would have to come in
23 on weekends. And that's something I did on my own accord,
24 working on weekends.

25 But even on week days, just to get things into the

1 system and go backwards and continue to find even a months
2 progressed there were stacks of invoices that other folks had
3 in a different department that should not have been with them
4 that I had to go and ask about and retrieve and scan. There
5 was just -- I had just complained that there was, from my
6 perspective a culture of lawlessness that was really hindering
7 and preventing me from doing my job to the best of my ability.
8 It was an encumbrance, so it was something that I complained
9 to them about, complained about stress, once again, attrition.
10 I mean this job, it was not -- like I thought it was giving me
11 a great insight into what lurks beneath in terms of accounts
12 payable because I ultimately wanted to get into internal audit
13 and file examination.

14 And you have to be acutely aware of -- on the AP so
15 much fraudulent activity can transpire there, so if I could
16 get a good understanding, so I got into that. But, however, I
17 mean it was something that -- this isn't a role that would
18 be -- is a reflection of your mental horsepower, but there was
19 just so much volume. And I even had -- this was something
20 that I called Nakul about. I had a -- I don't mind telling
21 you that I had a panic attack and I don't know if this was
22 dehydration, but I was working until -- I mean there were some
23 nights I worked until like nine o'clock, past 9:00, 10:00.
24 But this one night it was only up until 8:00, but I came home
25 and I just collapsed.

1 And I talked with Nakul about it, and he asked me,
2 Well, did you talk to your manager, you should talk to her.
3 And then I just, you know, I complained to her and I was like,
4 You know, I should be getting, you know, some kind of
5 recognition or overtime, and she came back and said that,
6 You're a salaried employee and --

7 Q When was that conversation, do you recall?

8 A This was late in the year, late in 2014.

9 Q Okay.

10 A I don't recall when exactly. But she, you know,
11 underlined it, her understanding was that it was black and
12 white, I was salary. I had the understanding as well that my
13 client is salaried, exempt, et cetera. And I wasn't in any
14 case. There were folks across the company we're dealing with
15 the same thing, and we just have to rally together.

16 And she was just under tremendous -- she was just
17 under a lot of pressure because I think how she to -- kind of
18 being the finance person she had to -- you know, it was very
19 much like a startup atmosphere and she had to lead in a manner
20 that would facilitate like an automatic level of production
21 from everyone. And to answer your question, it was late in
22 the year.

23 Q And did you have any other conversations with Ms. Carnes
24 or anyone else about overtime?

25 A So Ms. Carnes came to me and she said that she had a

1 discussion with somebody who sat next to her, I think he was
2 in Compliance, and they had a meeting and she told me that --

3 MR. NOTESTINE: Your Honor, I think that's hearsay,
4 hearsay within hearsay, and unless he can identify that
5 person, it's not an admission by a party opponent.

6 THE WITNESS: His name was Roger Barton.

7 MR. SINKULE: And we believe that it's an admission
8 by a party opponent.

9 THE COURT: Was Mr. Barton an employee of Shipcom?
10 (No audible response.)

11 THE COURT: Mr. Barton is an employee of Shipcom?

12 MR. NOTESTINE: I don't know.

13 (Pause in proceedings.)

14 MR. NOTESTINE: He was a high level.

15 THE COURT: All right. I'll allow it.

16 THE WITNESS: So she told me that he was also
17 wanting to believe that my role, alongside others, should, in
18 fact, be non-exempt. And when she told me this, I was like,
19 So that means the door is open, I should be getting overtime.
20 And she's like, I don't know, it's still being discussed. But
21 he was wanting to believe that given my duties and what I had
22 been doing, he even saw me a couple of times working late, and
23 he was like, Wow, man, you're still here. You know, take it
24 easy, go home.

25 But so in my mind, you know, a light bulb went off

1 and like, Wow, maybe I can get some overtime. But it
2 didn't -- the ball didn't roll that way and I was just very
3 frustrated so I thought -- I asked her, I mean I'm putting in
4 a Herculean effort, I should at least get a raise. And then
5 that's when -- and then I had a few other complaints about
6 specific things, the structure where the whole reason I was
7 hired into Accounts Payable was to -- so that there would be
8 an audit, like a three-way match in place so Procurement would
9 be putting out the purchase orders, which delineates what the
10 company ordered.

11 MR. NOTESTINE: I believe the witness is getting a
12 little far afield, I want to lodge an objection to the
13 narrative, make sure it's lodged.

14 MR. SINKULE: Yeah, let's --

15 THE COURT: Sustained.

16 BY MR. SINKULE:

17 Q -- streamline things --

18 A Okay.

19 Q -- so we can be a little more efficient. So let's -- if
20 you'll try to answer just what I ask you --

21 A Okay.

22 Q -- just so we can be as efficient as possible time-wise.
23 The conversation that you had with Ms. Carnes where she
24 indicated to you that Mr. Barton had indicated that he
25 believed you should be getting overtime, when was that

1 conversation?

2 MR. NOTESTINE: I would object, it mischaracterizes
3 his testimony.

4 THE WITNESS: I don't think it was late in the --

5 MR. NOTESTINE: Wait, wait, wait.

6 THE COURT: We need a ruling. Repeat the question.

7 BY MR. SINKULE:

8 Q Let me start the question and ask a question that might
9 be a little better. Okay. So the conversation that you had
10 with Ms. Carnes, the second conversation about her
11 conversation with Mr. Barton, when did that occur?

12 A That was also late in the 2014.

13 Q Okay. How long after the first conversation you had with
14 Ms. Carnes about overtime?

15 A It was not long, it wasn't more than a couple of weeks.

16 Q Okay. And you worked for Shipcom until when?

17 A April 2015.

18 Q Okay. And you mentioned a bit ago, you testified a bit
19 ago that you were paid a salary. Were you paid anything other
20 than a salary during your employment with Shipcom?

21 A No.

22 Q Okay. So Shipcom never paid you overtime after you had
23 these conversations with Ms. Carnes?

24 A No.

25 Q All right. Did -- you mentioned Mr. Goenka, having

1 conversations with him. Setting aside those conversations did
2 Mr. Goenka ever observe you performing your duties?

3 A We worked on one or two, I wouldn't say assignments but
4 he wanted to ask me for some clarification on an invoice
5 regarding -- I forget the nature of it but there was a vendor
6 who was very livid on not getting paid for the services that
7 they had professed to provide, and he was asking me to
8 ascertain and just determine whether or not they actually --
9 this contractor or subcontractor actually did the work, and in
10 my mind I think at the time I think I was wanting to believe
11 that from what I had seen in the invoices and the email
12 correspondence and everything that they had, but it was just I
13 think one or two assignments. But other than that, we didn't
14 work routinely.

15 Q Okay. And then what about Reddy Cherukupally, did he
16 ever observe you performing your job duties?

17 A No.

18 Q Okay. Mr. Islam, would you say that you exercised
19 discretion in performing your job duties for Shipcom?

20 A No.

21 Q Okay. Right. And --

22 A Like I said, I didn't have that kind of latitude.

23 Q All right.

24 A There was a lot of coaching and, you know, Make sure you
25 do this, do that and convene the seniors.

1 Q All right. And would you say that you exercised
2 independent judgment in doing your job for Shipcom?

3 A No. There was some I would say minor judgment calls
4 being made when I'm looking at invoices, and making sure that,
5 you know, if we are getting over-charged, like just seeing if
6 we actually paid the vendor within the contractually agreed
7 upon net terms, and just factoring in weekends, et cetera and
8 just making calls on that. But other than that, no.

9 Q So what --

10 A I don't think so.

11 Q -- just I want to understand what -- you said you made
12 some judgment calls to see -- you mentioned about looking to
13 see whether Shipcom had been over-charged. So what -- is
14 that -- did I understand you correctly?

15 A Yes.

16 Q Okay.

17 A If there are -- if we have late fees.

18 Q Okay. So what was the judgment call that you made on
19 that?

20 A Well, just making sure that -- I mean if those late fees
21 were warranted, if a -- if we did, in fact, pay within the net
22 terms, then they should rescind those late fees and --

23 MR. NOTESTINE: Your Honor, I don't understand how
24 this is relevant, it's disparaging the company, it's
25 inadmissible under 403. It's irrelevant and it's offered only

1 to disparage the company.

2 THE COURT: Sustained.

3 MR. SINKULE: All right. Thank you. I pass you as
4 a witness.

5 CROSS-EXAMINATION OF ZAHID ISLAM

6 BY MR. NOTESTINE:

7 Q Good afternoon, Mr. Islam.

8 A Good afternoon.

9 Q Good to see you again. I'm going to ask you a few
10 questions. And you got an offer letter from the company that
11 we've looked at already. Correct?

12 A Correct.

13 Q And that offer letter is -- fortunately for the jury we
14 have some overlapping exhibits, some are the same documents --
15 or and the same documents are in both of our exhibit lists.

16 This is the letter you looked at previously.
17 Correct?

18 A Correct.

19 Q And this lists a whole bunch of duties, quite a bit more
20 than that other document we looked at, Exhibit 19, which we'll
21 look at in a minute, Plaintiff's Exhibit 19. This is
22 Defendant's Exhibit 22 which is your offer letter.

23 (Defendant's Exhibit No. 22 identified.)

24 BY MR. NOTESTINE:

25 Q And this clearly says you will be a Financial Analyst.

1 Right?

2 A Yes.

3 Q That's quite a few job duties, many more than we've
4 looked at in 19, and I'm going to show you 19, Plaintiff's 19.

5 (Pause in proceedings.)

6 BY MR. NOTESTINE:

7 Q Which is this document, which this document -- you
8 remember this one we looked at?

9 A Yes.

10 Q We'll just scan a few duties. And we're going to go over
11 some of these duties by the way in a few minutes, but you said
12 you never actually saw this while you were employed, this
13 document. Right?

14 A While I was employed, I don't believe so.

15 Q The Accounts Payable Analyst. Correct?

16 A Yes.

17 Q Yeah. And do you have any knowledge about what the job
18 duties were for the person replaced you and whether these
19 might be that person's job duties, not your job duties?

20 A Probably.

21 Q Okay.

22 A But those job duties are so aligned that --

23 MR. NOTESTINE: Objection. The objection is he's
24 already answered the question.

25 THE COURT: Sustained.

1 BY MR. NOTESTINE:

2 Q Now in your offer letter that we looked at the company
3 offered you, on the second page, a salary of \$46,000. Right?

4 A Correct.

5 Q And that was paid on a monthly basis, up here at the top
6 near the front, this \$46,000. And that's what you were paid
7 throughout your nine months of employment. Right?

8 A Yes.

9 Q And the company always paid that, you understood that was
10 what you were being paid?

11 A Yes.

12 Q Paid your entire time. Right?

13 A Correct.

14 Q And you only worked nine months for the company. You
15 never got performance evaluations like we saw with Mr. Bethas
16 and Mr. Kehn, you never got one of those. Right?

17 A I asked for a mid-year one, I didn't get it, but --

18 Q Do you know if the company's policy, do you know if it
19 was you had to work a year before you got one and you were
20 just asking for six months, or what?

21 A I don't know if they had a policy, but I know I did ask
22 for one, but didn't receive one.

23 Q Okay. And when we looked at the application you filled
24 out, which was Plaintiff's Exhibit 17, just because -- I think
25 this is Plaintiff's Exhibit 17 I'm putting on the remote --

1 you said you put this in there, so it's salary desired,
2 46,000, date available, that's information that you add and
3 you put in there. Right?

4 A I mean I did put in the hours, I mean my handwriting is
5 there, but I do -- I could have as far as the position applied
6 for because that's the position that they told me to apply
7 for.

8 Q And there's no discussion during your interview with the
9 company that you would be paid overtime. Right?

10 A No.

11 Q And you actually got paid the salary that the company
12 offered you, 46,000, throughout your employment. Right?

13 A Well, they pro rated because I was there for nine months,
14 yes.

15 Q And you never complained to anyone at the company while
16 you were employed about violations of the Fair Labor Standards
17 Act. Right?

18 A No, I didn't really knew it was -- as far as -- that's
19 asking fairly standard --

20 Q In fact, you didn't even really know what the Fair Labors
21 Standards Act was while you were employed there. Right?

22 A I mean I had like a vague understanding of it, but I
23 didn't make any specific complaints along those lines.

24 Q And your complaints really were that you were working too
25 hard and should get more hard, not that you should be paid

1 overtime for 40 hours -- after 40 hours. Right?

2 A Well, when the overtime discussion was brought up --

3 Q Let me stop you there. That overtime discussion about
4 whether you should be overtime was actually after Ms. Carnes
5 left the employment of the company. Isn't that right?

6 A That was the second time.

7 Q Right.

8 A There was a discussion we had while I was on the job.

9 Q Well, and that was about -- that first discussion was the
10 first part where she said she thought it was under review but
11 the second one was after she had actually left the company.

12 A Correct.

13 Q Okay.

14 MR. NOTESTINE: Your Honor, I would ask that that is
15 hearsay and should be struck, she was no longer an employee of
16 the company when she made that comment. You should instruct
17 the jury not to consider that issue.

18 THE COURT: Response?

19 MR. SINKULE: I still think it's an admission by a
20 party opponent in terms of even the role she had at the
21 company, she was a high level person, equivalent to a CFO.
22 She was actually a vice president.

23 MR. NOTESTINE: It's after she left. She's no
24 longer an employee, it cannot be an admission of a party
25 opponent.

1 THE COURT: I believe that after she's left the
2 company it's not an admission of a party opponent.

3 MR. SINKULE: Okay. And we'll -- well, and my
4 understanding was that -- I think this is different from the
5 testimony that Mr. Islam --

6 THE COURT: I'll tell you what --

7 MR. SINKULE: -- gave.

8 THE COURT: -- you -- I'm going to let you all
9 clear this up with your questioning. You can establish when
10 you think the conversation occurred and whether or not she was
11 an employee. If you believe that's wrong, then you'll be able
12 to ask questions on --

13 MR. NOTESTINE: I think he did, that's why I just
14 made the objection, Your Honor, because he just said that --

15 BY MR. NOTESTINE:

16 Q She told you that, Ms. Carnes told you that, that second
17 part about being the classification after you -- after she had
18 actually left employment of the company.

19 A She told me it was reclassified.

20 MR. SINKULE: And I'll just say I think it's unclear
21 because earlier Mr. Islam testified that the first
22 conversation he had with her was when they were both still
23 employed, it was near the end of the year, and then the second
24 conversation he had with her was a couple of weeks later.
25 They were both still there at that time, so --

1 THE COURT: All right.

2 MR. NOTESTINE: Depositions.

3 THE COURT: Here's the ruling. Any hearsay from
4 Ms. Carnes while she's still with the company comes in as an
5 admission by a party opponent. Things that she repeated to
6 him after leaving the company we'll have to look at whether
7 there's some other way to get it in other than the admission
8 rule.

9 MR. SINKULE: Understood.

10 BY MR. NOTESTINE:

11 Q I'm going to hand you your deposition just so we --
12 because we talked about this in your deposition, just so that
13 we can clarify what the timing of those conversations were.
14 I'm handing you a sealed copy -- pardon me, an unsealed copy
15 of your deposition. Now you remember having your deposition
16 taken by me in the office of your counsel?

17 A Yes.

18 Q And in that deposition you promised to tell the truth at
19 that deposition?

20 A Yes.

21 Q And I'd like you to turn to Page 26 of that deposition.
22 And on Page 26, Line 6 I asked you, You didn't have those
23 discussions while you were employed, other than her saying
24 that her understanding was they were being reviewed. Right?

25 A And you said, Yes, it was just with her. And then,

1 Question, But then afterwards she had a more definitive
2 discussion, she thought the company classified you wrong.
3 Yes, correct. Okay. At that point she was no longer with the
4 company. Yeah, she left a month before I did.

5 A Yes.

6 Q So those conversations were after she had left the
7 company. Correct?

8 A As far as reclassifying, yes, it was after.

9 MR. NOTESTINE: So I'd ask the Judge for an
10 instruction that the jury should not consider that statement
11 about whether he should be reclassified or not.

12 THE COURT: Well, what I just understood, the
13 statement that he had been -- the position that he was in had
14 been reclassified it what she said after she left the company.
15 Is that correct?

16 MR. SINKULE: That's correct. There hadn't been any
17 questions about that from either Mr. Notestine or myself until
18 he read this from the transcript.

19 MR. NOTESTINE: I guess I'm confused. There's two
20 discussions. The first was it was --

21 THE COURT: Okay. You know what, let's --

22 MR. NOTESTINE: -- under review --

23 THE COURT: -- move on with this examination.

24 MR. NOTESTINE: Okay.

25 THE COURT: We can take this up later after --

1 outside the presence of the jury.

2 BY MR. NOTESTINE:

3 Q And at no point while you were employed did you actually
4 make a claim that you were misclassified under the FLSA and
5 entitled to overtime. Right?

6 A No.

7 Q That's correct, you never said that. Right?

8 A Correct.

9 Q Yeah. Sorry.

10 A Sorry.

11 Q And you have two college degrees. Right?

12 A Yes.

13 Q One in finance and one in real estate. Those are two
14 degrees. Right? Not just two majors and one degree?

15 A Correct.

16 Q And I'm sure as a finance -- a person educated in
17 finance, you can understand the importance of having accurate
18 numbers in the Finance Department. Right?

19 A Correct, theoretical background -- or understanding.

20 Q And it was very important for you to provide accurate
21 numbers on the files for Shipcom in your Finance Department,
22 it was important for you to do that. Right?

23 A That's correct, but I needed adequate training because I
24 hadn't had on-the-job exposure to that really.

25 Q And you had several jobs before going to Shipcom. Right?

1 A I had one major job, I had one full-time job and then a
2 few contract positions.

3 Q And you worked in the Department of Financial Services
4 for the State of Florida. Right?

5 A As a very entry-level staff auditor.

6 Q And you were -- you did -- you were salaried, did not get
7 overtime in that job. Right?

8 A Yes, I was salary, I was making 32,700.

9 Q And then you had a couple sort of part-time jobs, I think
10 you were maybe working for a temp company, and you worked --
11 you were placed in a couple of different companies and you got
12 hourly at those jobs. Right?

13 A Yes, one job they had nothing to do with my trajectory,
14 it was audit -- or file examination, it was, you know, oil and
15 gas insurance company, I was helping out claims adjusters, it
16 was more so customer service. The contract ended. They had
17 mentioned that they were going to open an audit position. It
18 didn't transpire that way, so I left elsewhere. And then
19 another company there was a lady who went on maternity leave
20 and it was just a clerical job that I had for a month.

21 Q And you were just paid hourly at those two jobs. Right?

22 A Correct.

23 Q And then you went to Universal America, an insurance
24 company in Houston. Right?

25 A Well, I went to Shipcom first for nine --

1 Q Okay. I'm sorry. Shipcom and then after Shipcom then
2 you went to Universal America, right, an insurance company.
3 Right?

4 A Correct.

5 Q And you were paid a salary at that job with no overtime.
6 Right?

7 A Correct.

8 Q And then you went to Office Depot in Florida and you were
9 an auditor there, sort of the kind of role you were looking to
10 get into. Right?

11 A Reasonably, yes.

12 Q And you were salaried there you didn't get overtime there
13 either. Right?

14 A Correct.

15 Q And the Shipcom job, when you got it at 46,000 was a
16 pretty sizable pay increase over these part-time jobs you had
17 before you went there. Right?

18 A About -- so 46,000, about like 4- or \$5,000 more.

19 Q Than the part-time jobs?

20 A Well, in terms of I was getting paid hourly, but after
21 multiplying that by 40 it was roughly -- yeah, it was roughly
22 like 5,000, \$6,000 more.

23 Q And you interviewed with other people in Finance. Right?
24 When you went for your work -- when you went -- when you were
25 interviewing for your job at Shipcom you worked at other --

1 interviewed with other people in Finance. Right?

2 A Correct.

3 Q Sorry, bad question. I apologize. And you even
4 interviewed with the president of the company too. Right?

5 A Who, the CEO?

6 Q Yeah.

7 A Yes, and the VP of Finance was in the room.

8 Q And all the people you interviewed with were high level
9 people with the company. Right?

10 A Correct.

11 Q And in the Finance Department you got there things were
12 kind of a mess. Right? I think you already testified about
13 that. Right?

14 A Yes, because they didn't have an AP function.

15 Q And your job was pretty much unique within the company
16 and no one really did anything like you. Right?

17 A Yes.

18 Q Because a lot of work you did related to VA projects.
19 Isn't that right?

20 A VA, well, yeah, I mean we were on the VA contract.

21 Q Okay. So most of the work you did, even though you were
22 in the Finance Department in Houston, related to VA work.
23 Right?

24 A Correct.

25 Q Okay. The vendors were vendors for the VA project,

1 things like that. Right?

2 A Yes.

3 Q And you said that before that your duties were pretty
4 consistent throughout your employment. Right?

5 A Correct.

6 Q And you saw this position as a way to learn about the
7 payables process so you could use that information to get into
8 auditing. Right?

9 A Yes, and file examination.

10 Q And you worked in an office, it was a desk job, not
11 anywhere out in the field. Right?

12 A Correct.

13 Q And really before you got there basically nobody was
14 paying attention to payables. Correct?

15 A Yes. I mean there was a backlog of invoices and I just
16 had to find a lot of these hard copy invoices and get them
17 into soft copies so that we can actually -- network with IT
18 does that with the vendor portal. So I think I streamlined
19 the process.

20 Q You felt it was part of your job to get the payable
21 process up to speed. Right?

22 A That's what it was predicated on, that was the crux of
23 it, to reduce the backlog and get the payables up to speed.

24 Q And you had to build relationships with suppliers and
25 vendors to get them taken care of. Right?

1 A I mean we had -- there was no foundation of trust,
2 they -- again, they were being neglected, so really from the
3 first week I was getting a lot of livid calls, so.

4 Q Part of your job was to restore relationships with those
5 vendors. Right?

6 A To mollify them, yes.

7 Q And you were given them responsibility to correct this
8 problem. Right?

9 A With the guidance of the seniors, with Tim, at the time
10 Rebecca, they were telling me -- Nancy as well, they would
11 tell --

12 MR. NOTESTINE: Objection, Your Honor, those are not
13 employees of the company, I object to any statements about
14 what they were telling him. That's hearsay. They were
15 contractors, not employees.

16 MR. SINKULE: At least one of those employees, and
17 this was an employee, Nancy was, Mr. Islam also reported to
18 them. So he's talking about the guidance they provided him.

19 THE COURT: Overruled.

20 BY MR. NOTESTINE:

21 Q I think my question was, you were building relationships
22 with the suppliers and vendors. Right?

23 A Correct.

24 Q And lots of the vendors had never been paid and they were
25 livid and that was part of your job to fix those problems that

1 you just mentioned there. Right?

2 A Right.

3 Q And you thought the work was very important work. Right?

4 A Of course.

5 Q These vendors, if they weren't paid, they were important
6 to the project and that would cause problems on the project.

7 A Of course. But also to make sure --

8 MR. NOTESTINE: Objection. Objection.

9 THE WITNESS: -- that they were legitimate --

10 MR. NOTESTINE: I think he answered the question, I
11 object to the non-responsive part of that answer, Your Honor.

12 THE COURT: Sustained.

13 BY MR. NOTESTINE:

14 Q Ms. Carnes, your supervisor, only gave you a few pointers
15 on your job, and it was your job to handle the problem pretty
16 much on your own. Right?

17 A No, I had weekly guidance from her.

18 Q Do you remember saying something different in your
19 deposition?

20 A No.

21 Q Okay. You actually had your deposition done by video, do
22 you remember that?

23 A Correct.

24 Q And I'd like to show on Page 44 and 45 video clip 1 of
25 your deposition on that issue.

1 THE COURT: Are we -- hold on. Are we just doing
2 page and line? The question, I will allow -- it would be a
3 lot better if you just have the written deposition, but I --
4 we're not going to do a long video clip just --

5 MR. NOTESTINE: Well, it's -- yeah, it's pretty
6 short. It's --

7 THE COURT: Is it the question that he just
8 answered?

9 MR. NOTESTINE: He -- yeah, he said, No, he did not.
10 My question was, Your supervisor only gave you a few pointers
11 on this and it was your job to handle the problem pretty much
12 on your own. Right? He said, That's not right. And I'm
13 quoting from Page 45, Line 10 to Page 46, Line 1. If you'd
14 rather, Judge, I can point him to the deposition.

15 THE COURT: I think that would be better.

16 MR. NOTESTINE: Okay.

17 BY MR. NOTESTINE:

18 Q Could you turn to Page 45 in your deposition. Are you on
19 Page 45 of your deposition?

20 A Yes.

21 Q Do you see there on Line 10 where it says, I assume that
22 this was something important because vendors were important to
23 the contract to be performed. Right? Do you see that?

24 A Yes.

25 Q And you said, Sure, I remember we were trying to change

1 the optics of the company, and then I asked, Was this
2 something Ms. Carnes helped you with or was this something you
3 mostly did yourself. And you said, and I'm going to read the
4 answer,

5 "Well, she gave me some pointers briefly, like she
6 told me there's one reason she wanted me to do the
7 work was because she liked that I was cordial and I
8 could speak with people calmly, and she just said,
9 This is going to be one of your roles, if you could
10 help me and build relationships with suppliers, that
11 would be like a huge victory for the company. So
12 she just gave me some minor brief pointers but from
13 there it was my responsibility to do that because it
14 was sort of like a startup atmosphere where people
15 were juggling a myriad of roles so everyone was
16 busy."

17 Isn't that -- wasn't that your answer at the time?

18 A Yes, and it was weekly.

19 Q You really didn't get much of any training from the
20 company when you went to work and you had a finance degree and
21 were expected just to sort of run with it from there. Right?

22 A I didn't know anything about accounts payable. I got
23 tremendous coaching from the leads that were there. If I were
24 to run with things, then there would be have been chaos. I
25 did not -- I didn't have hands-on experience with accounts

1 payable, that was not the expectation.

2 Q Yeah, let's look on Page 8 of your deposition. And on
3 Page 8 of your deposition I'm asking, You had a financial
4 background, Line 9, You had a financial background but you
5 didn't have -- know what was -- an accounts payable person did
6 you? And your answer was, I mean I had a high level
7 understanding but not so much. I mean I just, from what I
8 learned in accounting of course but no high on-the-job
9 experience. And then I asked you, So you basically learned it
10 on your own as you went along. Yeah. Your answer was what,
11 could you read your answer there?

12 A It was learning on the fly.

13 Q Yes, yeah, like really learning on the fly. That was our
14 answer when I asked you at your deposition. Right?

15 A Yes, but still getting guidance, especially when I was
16 making mistakes, so.

17 Q And you got guidance on your job early on from the
18 contractors you worked with, but later in 2014 and into 2015
19 you felt you were able to make judgment calls and had an
20 adequate amount of independence. Right?

21 A Minor judgment calls and some independence in terms of
22 just making sure that we were paying per the contractually
23 agreed upon terms.

24 Q Let's turn to Page 116 of your deposition. At the very
25 bottom of 116 on Line 23 I asked you, Did you feel like you

1 had a fair amount of independence. And you asked me, What do
2 you mean by that. I said, I mean, you know, were you able to
3 make decisions on your own. And you answered, Well, I mean at
4 some point I think like early I mean I was just getting a lot
5 of guidance, but a lot of that was just judgment calls and --.
6 And so I asked you, So you had to make your judgment calls.
7 Your answer is, Yeah, I would say like late in the year and
8 early into 2015.

9 And then I asked,

10 "Were you able to resolve problems on your own or
11 did you have to always go to somebody else to get
12 your problems resolved?

13 "Well, early on I mean because I didn't know
14 anything about the position, it was just a setting
15 where I was asked some question and, you know, it
16 was the first time they had had that role so it was
17 kind of a evolving position. So there really wasn't
18 any expectations, they just needed someone to --
19 something to be filled and someone to be the kind
20 of, you know, gathering, just somebody doing that
21 kind of work. But I thought I had, you know,
22 adequate independence."

23 Isn't that what your statement was?

24 A Yes, I did say that I had some independence.

25 Q So I want to go through a few of your duties. Your

1 lawyer went through some duties on Exhibit -- Plaintiff's
2 Exhibit 19, which was for the position of the person that
3 replaced you. But let's look at what your position --

4 MR. SINKULE: Objection --

5 MR. NOTESTINE: -- was --

6 MR. SINKULE: -- that mischaracterizes the
7 witness's testimony. He did not say that that -- those were
8 the job duties of the person who replaced him definitively.

9 MR. NOTESTINE: But he did.

10 MR. SINKULE: He said some --

11 THE COURT: I'll sustain the objection. I believe
12 what he said is it could be that those were the job duties of
13 the person that replaced him.

14 MR. NOTESTINE: Okay.

15 BY MR. NOTESTINE:

16 Q And I showed this before, this is Defendant's Exhibit 22,
17 and your offer letter actually had quite a few job duties
18 actually listed in your offer. Right? It was a little bit
19 different from some of the others, I don't know why that was.
20 But you actually had quite a few listed. Right?

21 A As I did tell you, if you recall, at deposition, a lot of
22 this was redundant and it was under Accounts Payable.

23 Q And you also had -- you have a -- actually did a LinkedIn
24 page like some of the other Plaintiffs in this case that we've
25 looked at. Do you remember doing a LinkedIn page where you

1 summarized your work at Shipcom?

2 A Sure.

3 Q And this is the first page of that, and I apologize, it's
4 a little hard to see. And this is you, Zahid Islam. Right?

5 A Yes.

6 Q Internal Audit at Office Depot. So this was after you
7 had left and while you were working at Office Depot. Right?

8 A About three years after.

9 Q It's actually printed as of December 15, 2017.

10 A Two years, two and a half years.

11 Q This is Defendant's Exhibit 23.

12 (Defendant's Exhibit No. 23 identified.)

13 BY MR. NOTESTINE:

14 Q And it lists on the second page, or at least what printed
15 off as the second page, your job duties. And the ones you
16 list in the LinkedIn page that you wrote was your position.

17 A The position that was designated to me in the offer
18 letter, Financial Analyst.

19 Q Okay. And we're going to talk a little bit about what
20 these roles were that you performed. And the first one was
21 talk about here is, On finance team to assess a new ERP
22 accounting system, Deltek. And we've talked about that
23 already, it's a software system that the VA was using. Right?

24 A Right, and that's really something everyone was doing, it
25 was the ERP software that the company was using and I was on

1 the finance team and we were trying to figure it out.

2 Q You understood that you needed to upgrade the accounting
3 software that you were using, and which was Deltek. Right?

4 A Upgrade the software?

5 Q Yeah.

6 A I did not upgrade any software. I mean that was the
7 established -- that's was the VA's preferred ERP software,
8 Deltek, so we were working with that, we were trying to figure
9 out what was the most efficient way to work with it. I didn't
10 upgrade anything.

11 Q Well, I'm not saying you upgraded it yourself, but you
12 understood that the software needed to be upgraded. Right?

13 A Yes, because it couldn't catch duplicate the payments
14 alongside other important things.

15 Q And you also say here that you were integral to startup
16 operations by developing payables process incorporating AP
17 best practices and much-needed separation of duties. And
18 that's what you listed as one of the things you did there.
19 Right?

20 A Yes.

21 Q And you also indicate that you analyzed 250-plus
22 transactions monthly, reconciled vendor statements for
23 accuracy for peer analysis of accounts, and corresponded with
24 175 suppliers to address and resolve their individual needs.
25 Right?

1 A Right. At that time that was assisting, so.

2 Q Well, that's not what you say in your LinkedIn page. You
3 said you were resolving their needs. Right?

4 A Resolve -- now you're talking about suppliers, I was
5 referring to the vendor statements. I was helping, assisting
6 along those lines.

7 Q I'm not sure I understand what you're saying. It says --

8 A The second line goes on --

9 Q -- and correspond with 175 suppliers to address and
10 resolve their individual needs.

11 A Well, that's correct, I was referring to something else,
12 but never mind.

13 Q And, in fact, you had sent an email to your -- Shuba, who
14 took over for Ms. Carnes, right, about I believe this issue,
15 wasn't it?

16 A Regarding?

17 Q Well, that's one of the things you said to her about what
18 you had done. Right? Remember that?

19 A As far as fierce?

20 Q Yeah, for example here I'm looking at Defendant's
21 Exhibit 86, which is March 13, 2015 memo.

22 (Defendant's Exhibit No. 86 identified.)

23 BY MR. NOTESTINE:

24 Q See that? It's from you to Shuba.

25 A I think she was known as Shuba.

1 Q Yeah, this is Shuba, the person that took over for
2 Ms. Carnes. Right?

3 A Yes.

4 Q And among this you were telling her what your
5 responsibilities were pertaining to your loan of financing,
6 and you said you were the Financial Analyst in Accounts
7 Payable. Right?

8 A Correct.

9 Q And we've talked about ERP, we've talked about routine AP
10 procedures, we're going to talk about some of these. Number 7
11 was you correspond with 70-plus suppliers to address and
12 resolve their individual needs. Right?

13 MR. SINKULE: Objection, mis-states the document.

14 MR. NOTESTINE: Correspond with 200-plus suppliers
15 to address and resolve -- did I read that wrong?

16 MR. SINKULE: You said 70-plus.

17 MR. NOTESTINE: Okay. It's 200-plus. I'm sorry.

18 THE WITNESS: Yes.

19 BY MR. NOTESTINE:

20 Q This is what you were telling your supervisor you were
21 doing. Right?

22 A Yeah, but she understood I was skimming items.

23 MR. NOTESTINE: Your Honor, I object, speculation.
24 He hasn't stated how --

25 THE WITNESS: It's in the deposition --

1 THE COURT: Sustained.

2 BY MR. NOTESTINE:

3 Q Number 8, research and resolve rejected invoice, escalate
4 extraordinary issues to upper management.

5 A Yes, of course.

6 Q That's what you're telling Shuba. Right?

7 A (No audible response.)

8 Q Not every issue. Right? Just extraordinary ones.
9 Right?

10 A To upper management, yes. The leads were not upper
11 management.

12 Q Weren't even employees actually. Right?

13 A I didn't hear that.

14 Q They weren't even employees, were they?

15 A They were 1099 contractors.

16 Q Okay. Going back to your LinkedIn profile, you say you
17 helped establish, the next bullet point, routine and auditable
18 AP process within the company that meets FAR regulations.
19 Right?

20 A Yes.

21 Q And FAR is a federal regulation that related to the VA.
22 Right?

23 A Federal Acquisition Regulations.

24 Q Then it says you developed automated three-way matching
25 of invoice and expedited approvals of payments. And this was

1 separated duties between Accounts Payable, Procurement,
2 Logistics, which was -- I have a hard time actually reading --
3 three-way matching of invoices, expedited approvals and
4 payments, right, is what your LinkedIn profile said. Right?

5 A Yes, that's what my Accounts Payable position was
6 predicated on.

7 Q And this included the process and the AP policies and
8 procedures that you wrote. Right?

9 A That, all of that and -- but again, that was a one-off.

10 Q And you say here that you established a vendor portal to
11 ensure documentation is collected and invoices paid.

12 A That's something that collectively as a unit we worked
13 with IT because we didn't have the ability to establish a
14 vendor portal, but we ditched that idea, so interdependently
15 correctively as a unit we did do that.

16 Q And it looks like to me -- I'm going to show you what's
17 been marked as Defendant's Exhibit 84.

18 (Defendant's Exhibit No. 84 identified.)

19 BY MR. NOTESTINE:

20 Q This is something that you're -- an email you're sending
21 to Ms. Carnes. It says, Attached -- on this email is a Word
22 document, it's intended to delineate our Accounting/Finance
23 Department's work flow process pre-vendor portal. Is that on
24 this issue that we're talking about, establishing a vendor
25 portal along with IT I guess?

1 A Yes.

2 Q And this is what's attached, it's a document that goes
3 over a variety -- it's a little hard to read, I don't want to
4 go over this in great detail.

5 A It's Tim and Brandy's names.

6 Q Yeah. So Zahid is providing a whole lot of information
7 on this about what needs to be done and kind of doing a check
8 list of things that need to be -- or need to be addressed for
9 this vendor portal. Right?

10 A Yes, it's Zahid by the way.

11 Q Zahid. I'm sorry. And Ms. Carnes responded to your
12 email, do you remember responding to her back and forth about
13 this?

14 A No, I don't. I don't remember -- I mean I remember email
15 and response, but I can't tell you the details.

16 Q But she sent you an email Friday, October 3, 2014, she
17 said, Please fill in Others columns and let us all edit as
18 needed, it has to be written process and procedures are very
19 thorough steps. So there was probably some going back and
20 forth. And in this document there's a -- it's a little bit
21 hard to read but it looks like there's a picture of a
22 whiteboard where you must have been in a meeting with the
23 VP -- the finance people where you're talking about this
24 vendor portal and kind of thinking of ideas. Right?

25 A I remember this. We had this meeting in Rene's room, Tim

1 and -- Tim was also right there, and we were just pretty
2 much -- we wanted to put things in writing so we went to the
3 whiteboard.

4 Q Okay. And so she selected a picture of it and sent it
5 around, and then there's some follow up to this email about
6 all these different issues on the vendor portal they were
7 suggesting. And then -- so this is what we kind of looked at
8 before and then you filled in some other items. Right?

9 A Yes.

10 Q Now there's --

11 A At their request.

12 Q -- Tim and Brandy and Rene, at least whenever this draft
13 was. It didn't add too much besides what you were putting in
14 there. Right?

15 A I mean that was the unfinished draft, from there I
16 believe they had to fill it in.

17 Q Okay. And you had already provided your information for
18 that. Right?

19 A Correct.

20 Q And so there was a fair amount of brainstorming going on
21 with this vendor portal on how to deal with things. Right?

22 A Yes.

23 Q And then it says on your LinkedIn profile that you --
24 down to this next one here where it says, Wrote AP policies
25 and procedures. Right?

1 A Yes, at Brandy's request.

2 Q And that was something that the company did not have
3 before you did those. Right?

4 A Correct.

5 Q And you put the first company accounts payable policies
6 and procedures. Right?

7 A I drafted them, I don't know if they implemented them.

8 Q Okay. And that was something that was important for the
9 company. Right?

10 A I believe so.

11 Q And Ms. Carnes encouraged you to put together the
12 policies and procedures because you complained that there was
13 not enough structure for your job. Right?

14 A Yes, I mean there were people prior to the AP function
15 being built in, there were people collecting the cash,
16 recording the transactions, writing the checks. So we had
17 segregation of duties. She wanted me to put that down in
18 writing.

19 Q Okay. And here is an email that you sent Ms. Carnes, the
20 Vice President of Finance, or CFO, whatever she was, and you
21 are -- it has, Attachment to Accounts Payable PMP document.
22 Right?

23 A Yes.

24 Q So this is something -- your draft of what you had
25 prepared. Right?

1 A That's what I said earlier, I drafted it.

2 Q Okay. And I'm not going to go over great detail, but
3 this is something you wrote. Right? It's a multi-page
4 policies and procedures document about segregation of duties,
5 who was supposed to do what, how AP files are supposed to be
6 set up, how voucher processing steps were supposed to be
7 handled, voucher processing steps for PO invoices,
8 communication with suppliers, and concluding responsibilities.
9 Right?

10 A Could you go back to the first page?

11 Q The very first page?

12 A Yes.

13 Q The email or --

14 A No.

15 Q The document.

16 A Yes --

17 Q By the way, if you want to look at the document, it's in
18 that notebook there. It's -- the big notebook. I'm actually
19 going to show you. It's easier to look at the document
20 instead of looking at the overhead.

21 But anyway, this is something you -- I'm not going
22 to get into an great detail, but this is something you drafted
23 for the company. Right?

24 A Yes. But I think it's worth pointing out that I refer to
25 the position as an AP Clerk, and the duties delineate that of

1 an AP clerk.

2 MR. NOTESTINE: Your Honor, I move that the Court
3 strike that last section about the duties of the AP Clerk,
4 that's not the question I asked him.

5 THE COURT: Sustained.

6 BY MR. NOTESTINE:

7 Q You had sent these policies and procedures to HR to show
8 the important work that you were doing for the company.
9 Right?

10 A Yes.

11 Q I'm showing you what's been marked as Defendant's Exhibit
12 28.

13 (Defendant's Exhibit No. 28 identified.)

14 BY MR. NOTESTINE:

15 Q Have you seen this document before?

16 A Yes, at the deposition.

17 Q And it's attaching the same, pretty much the same
18 document we just looked at. Right?

19 A Correct.

20 Q And you were sending this on April 3, 2015. This is
21 pretty shortly before you left the company. Right?

22 A Yes.

23 Q This is after Ms. Carnes left and when you had now gotten
24 a new supervisor. Right?

25 A Correct.

1 Q When you say here, I have just sent this to Shuba, along
2 with Melissa and Tim -- Shuba was the new supervisor along
3 with Melissa and Tim, the contractors. Right?

4 A Yes.

5 Q But I wanted you to have this for your reference. I
6 wrote the AP policies and procedures in December. It
7 highlights my thought process of the position to the best of
8 my ability. While they may inadvertently slip up here or
9 there, I want to understand. I've been docile in giving my
10 full efforts and so I started working through weekends. I
11 look forward to guidance on making the process work be
12 efficient and look forward to our team incorporating new ideas
13 and working together as a team. Hopefully we close on a
14 positive note. Right?

15 A Yes.

16 Q There's just a few other duties that I just want to
17 mention on this and then we'll be done. I actually have a
18 hard time seeing this. It actually indicates here you provide
19 assistance with various account analysis and reconciliations,
20 but I think you said that that was mostly being done by the
21 contractors. Right?

22 A Where is this?

23 Q After, Wrote AP policies and procedures I'm now saying,
24 Provide assistance with various account analysis or
25 reconciliation. Right?

1 A Yes, I assisted them whenever they needed me.

2 Q That was their major responsibility, you just helped out.

3 A Yes.

4 Q Then you said, Help accounting personnel with closes of
5 the ledger on a monthly basis. Again, that was their
6 responsibility, you were just helping them out. Right?

7 A My work as AP correlated with that, so we informed them
8 on the nuances of AP directly related to that for them to be
9 able to close out the ledger. They needed a fix on what I was
10 doing, so we had active communication.

11 Q You worked interdependently with Procurement, Logistics
12 and Supply Chain team members. We talked about that already,
13 is that that whiteboard thing, or is that something -- no,
14 that was the portal.

15 A No, I know you asked me this at the deposition, but
16 interdependently just means working like as a team player,
17 like working with different departments because as we -- as
18 the Finance team we established the three-way matching, we had
19 made the -- or Ray made the determination that Logistics has
20 to do the receiving, so I had to communicate that to them.

21 Q So you worked with a couple of other departments sort of
22 as a Finance Department representative to help work out deals,
23 issues. Right?

24 A Yes, just like a carrier pigeon.

25 Q Let me ask that again, you work with these other

1 departments as the Finance representative to work out issues
2 with them. Isn't that right?

3 A Not as a Finance representative, strictly as the Accounts
4 Payable function and underlying why I'm not doing the
5 receiving and why they should be doing it. So when I
6 interdependently communicate it to them, or with them rather,
7 what happened was there were folks in Logistics who didn't
8 want to do the receiving, and I had to communicate to them why
9 AP can't do it and why Procurement can't do it, and why they
10 need to be confirming what was in the packing slips and
11 just --

12 Q So you were working out problems with them. Right?

13 A Yes, communication.

14 Q And finally, and I think you talked about this in your
15 direct, you worked to improve vendor relations and restore
16 supplier confidence, right?

17 Q Yes, as a result of getting the payables up to speed.

18 A And the vendors told you they were happy that you were
19 getting the payables up to speed. Right?

20 A Yes.

21 Q And you were helping with vendors because those vendors
22 were mostly on the project with the VA Hospital. Right?

23 A Yes.

24 MR. NOTESTINE: I pass the witness, Your Honor.

25 THE COURT: Redirect, Mr. Sinkule?

1 MR. SINKULE: Yes, Your Honor.

2 REDIRECT EXAMINATION OF ZAHID ISLAM

3 BY MR. SINKULE:

4 Q All right. Mr. Islam, Mr. Notestine asked you some
5 questions about other jobs that you have held, both before
6 Shipcom and after Shipcom. Do you recall those questions?

7 A Yes.

8 Q Okay. In terms of the jobs that you have held both prior
9 to working for Shipcom and after working for Shipcom, have
10 any of those jobs been jobs in which you performed the same
11 duties that you performed when you worked for Shipcom?

12 A No, as a compliance auditor with the State of Florida,
13 the only thing that the same was that I was getting guidance
14 from the auditors, but the realm of audit is very different
15 from accounts payable, than what I had been doing. And like I
16 said, I hadn't had previous exposure to that.

17 Q Okay.

18 THE COURT: Mr. Sinkule, just a quick question. The
19 jury would like to take a quick break, but I don't know how
20 long you're going to be on redirect. Do you have several
21 questions?

22 MR. SINKULE: Yeah, I've got some more so it may
23 be --

24 THE COURT: Okay.

25 MR. SINKULE: -- a good time to break.

1 THE COURT: Let's take a quick break.

2 THE CLERK: All rise.

3 (Jury exits courtroom at 3:54:28 p.m.)

4 (Recess taken from 3:54 p.m. to 4:03 p.m.)

5 THE COURT: All right. The jury is ready? We need
6 to wait for the -- oh, here we go.

7 UNIDENTIFIED SPEAKER: Judge, do you know what time
8 you'd like to start tomorrow?

9 THE COURT: The jurors are asking?

10 UNIDENTIFIED SPEAKER: The jury is downstairs --

11 THE COURT: Let me find out if they're going to --
12 I think -- Counsel, if we started at 8:30 or 9:00 tomorrow --
13 well, so here's my only concern. We have a juror, Number --
14 she's Panel Member Number 5, who's going on vacation next
15 week, so she needs to be finished by Friday. I think we
16 should just bite the bullet and start at 8:00 if they want to
17 start at 8:00.

18 UNIDENTIFIED SPEAKER: Fine with me.

19 THE COURT: All right.

20 MR. SINKULE: That's -- yeah, that's fine with us.

21 THE COURT: All right. Okay.

22 THE MARSHAL: All rise for the jury.

23 (Jury enters the courtroom at 4:04 p.m.)

24 THE COURT: Be seated, please.

25 Ladies and gentlemen of the jury, we, in talking

1 about the schedule, we may be able to release you a little bit
2 early today. The lawyers and I will stay and do work
3 regarding the charge. We will have the case closed, both the
4 Plaintiff and Defendant by tomorrow will finish with their
5 cases and we'll have closing arguments tomorrow and you will
6 receive the case for deliberations.

7 Are you all still fine with starting at 8:00 a.m.
8 tomorrow morning?

9 (No audible response.)

10 THE COURT: All right. We will begin again at 8:00
11 a.m. tomorrow morning, and we will -- you know, you'll be able
12 to work as late as you want to deliberating tomorrow, and
13 you'll deliberate until the -- until you reach a decision. So
14 in terms of housekeeping issues, you'll probably leave a
15 little before 5:00 today and we'll start at 8:00 a.m.
16 tomorrow.

17 All right. Please proceed, Mr. Sinkule.

18 MR. SINKULE: Thank you.

19 REDIRECT EXAMINATION OF ZAHID ISLAM (RESUMED)

20 BY MR. SINKULE:

21 Q All right. Mr. Islam, there's been some testimony from
22 you today about your title, your job title at Shipcom. What
23 did you say, what would you represent to people if you were
24 out at a cocktail party and someone said, Hey, what's your job
25 or what is your title, what would you have said?

1 A The title is Financial Analyst.

2 Q Okay. And so what is your understanding in general of
3 what the title Financial Analyst means, not in your role
4 necessarily at Shipcom, but just generally speaking?

5 A Just budgeting, forecasting, extrapolating the
6 performance of the company. Very different from the AP
7 function.

8 Q Okay. And so is that what you were doing for Shipcom,
9 were you doing in the traditional sense the job of a Financial
10 Analyst?

11 A No.

12 Q Okay. I'm going to show you -- let's see, let's look at
13 Defendant's Exhibit Number 23. This is the LinkedIn profile.

14 (Pause in proceedings.)

15 BY MR. SINKULE:

16 Q This is very faint. Okay. A little bit better. All
17 right. So let's look at the second bullet point. You see
18 this here, it says, Integral to startup operations by
19 developing payables process incorporating AP best practices
20 and much needed separation of duties. Did I read that
21 correctly?

22 A Correct.

23 Q Okay. And that's some information that you provided on
24 your LinkedIn profile. Correct?

25 A Yes.

1 Q And is that something you did at Shipcom?

2 A Yes.

3 Q Okay. And how would you -- well, how did you develop the
4 payables process at Shipcom?

5 A Well, it was just by the position being open that really
6 opened the door for the automated -- for the three-way
7 matching, and as far as developing the payables process, just
8 getting things scanned in, having soft copies and having them
9 so that another company can have a clear idea of the cash flow
10 in it, and to me developing the payables process was just
11 doing things scrupulously and getting them into the system so
12 they're available electronically.

13 Q Was there a payables process at Shipcom prior to you
14 joining the company?

15 A There was but it was being -- it was not scrupulous, it
16 was being carried out by a person who shouldn't have been
17 doing the payables.

18 Q What do you mean when you say wasn't scrupulous?

19 A There was collusion.

20 Q Okay. And so what did you do in the role that when you
21 say, I did the job scrupulously, what do you mean by that?

22 A Well, just I mean I was performing the function of
23 Accounts Payable and I was not doing, obviously not
24 Procurement, I was not doing receiving. There were times that
25 people were -- the other departments wanted the AP function to

1 be doing the receiving function of the three-way process, but
2 I had to -- obviously we deliberated, I convened with the
3 leads and then I would explain to them that there's no way the
4 AP function can be doing the receiving because that would be
5 just a blatant violation of doing things scrupulously.

6 MR. NOTESTINE: Your Honor, I object to this line of
7 questioning. Again, it's not relevant to the issue and it's
8 disparaging to the company.

9 MR. SINKULE: It's relevant --

10 MR. NOTESTINE: Rule 403 I'm arguing it's
11 inappropriate.

12 THE COURT: Response?

13 MR. SINKULE: Well, this is information that
14 Mr. Notestine previously asked about and I'd like to redirect
15 my client to answer the -- just so we can explain what it was
16 that he meant by that.

17 THE COURT: Overruled.

18 BY MR. SINKULE:

19 Q And I think you finished answering my question. Is that
20 right?

21 A Yes.

22 Q Okay. Let's look at the fourth bullet point, Help
23 establish routine, do you see that, in auditable AP process
24 within the company that meets FAR regulations. Do you see
25 that?

1 A Yes.

2 Q And Mr. Notestine asked you about that. Correct?

3 A Correct.

4 Q So what's the reference here, what routine and auditable
5 AP process did you establish, or were you referencing here?

6 A Well, previously there wasn't really a paper trail or not
7 a trial because some of the invoices were manual hard copies
8 and just by me scanning them and scraping them over and have
9 them available electronically, and entered into Deltek made it
10 auditable because previously there were stacks of invoices
11 lying around in cabinets and there was no paper trail.

12 Q So this says you established the AP process. Was there
13 an AP process in place prior to you joining the company?

14 A I don't believe so. That's why they brought me in,
15 that's the position they needed to fill.

16 Q And did you do that on your own?

17 A No, I was getting guidance once again by the leads who
18 were there, first Rebecca, Tim and the Accounting Manager that
19 they brought in full-time and my boss, Rene.

20 Q All right. Let's look at another exhibit. Let's look at
21 Defendant's Exhibit 83.

22 (Defendant's Exhibit No. 83 identified.)

23 BY MR. SINKULE:

24 Q Mr. Islam, do you recall Mr. Notestine asking you some
25 questions about this document?

1 A Yes.

2 Q And this is the email that you sent to Rene, Ms. Carnes,
3 and you reference in this that you had -- you're happy to
4 inform her that you had -- I have the AP policies and
5 procedures drafted, reviewed by Irvana (phonetic) and then you
6 attach those to the email. Correct?

7 A Correct.

8 Q Okay. And then attached to the email is the document,
9 Accounts Payable Policies and Procedures. Correct?

10 A Correct.

11 Q And you testified about this I think on direct that this
12 was something you had put together near the end of the year.
13 Is that correct? Near the end of your first year there, 2014.
14 Right?

15 A Yes.

16 Q And, in fact, that's what this email stated, end of the
17 year, 12/15/2014. Is that --

18 A Yes.

19 Q -- correct? Okay. And tell us again, how long did it
20 take you to compile this information that's contained in
21 Defendant's Exhibit Number 83?

22 A Just a couple of days and at this point I had a much
23 better understanding obviously, several months into the AP
24 function, and what others were doing, and alongside just a lot
25 of reading, a lot of reading that I was doing on the side.

1 Q Okay. And so of the nine months you worked approximately
2 nine months you worked for Shipcom, you spent a couple of days
3 on this. Correct?

4 A Correct.

5 Q Any other policies and procedures that you put together
6 on behalf of the company during your nine months of employment
7 with Shipcom?

8 A No.

9 Q All right. Let's look at Exhibit Number 28, Defendant's
10 Exhibit Number 28. Okay. Mr. Notestine asked you about this
11 email. Do you recall that?

12 A Correct. Yes.

13 Q And this is an email that you sent to Malek. Is that
14 what guys referred to him as?

15 A Yes, and we also invited MK.

16 Q MK. Okay. And so this was sent in April, April 3, 2015.
17 Correct?

18 A Correct.

19 Q And to this you attached -- look at the next page -- a
20 copy of the same Accounts Payable Policies and Procedures that
21 you had previously circulated back at the end of 2014.
22 Correct?

23 A Correct.

24 Q And why did you send this email to MK?

25 A Well, because we just had my former boss, she left, she

1 departed the company, and new management was in so I just
2 wanted to make it exceedingly clear to him -- we had talked
3 previously in person, but I just wanted in writing that just
4 beyond, you know, my duties. I didn't -- I was adding value
5 so I just wanted that to be known.

6 Q Okay. All right. Thank you.

7 MR. SINKULE: I pass the witness.

8 MR. NOTESTINE: I have no further questions, Your
9 Honor.

10 THE COURT: All right. You may be excused,
11 Mr. Islam.

12 (Witness steps down.)

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, we are going to break for the day and release you at
15 this point and we will pick up tomorrow at 8:00 a.m.

16 THE MARSHAL: All rise for the jury.

17 (Jury exits courtroom at 4:15 p.m.)

18 (Outside the presence of the jury.)

19 THE COURT: All right. If the parties want to be
20 excused, and corporate reps, they don't have to stay for the
21 charge conference --

22 MR. NOTESTINE: Yeah, we're --

23 THE COURT: -- if they don't want to.

24 MR. NOTESTINE: -- going to let our guys go.

25 THE COURT: Okay.

1 MR. NOTESTINE: And then we need about -- just
2 10 minutes for Mr. Sinkule and I to kind of go over a couple
3 of things.

4 THE COURT: That's fine. Well, we'll pick up after
5 4:30.

6 MR. NOTESTINE: Great, Your Honor. Thank you.

7 THE COURT: All right. Thank you.

8 (Recess taken from 4:16 p.m. to 4:35 p.m.)

9 (Outside the presence of the jury.)

10 UNIDENTIFIED: Judge, Jenni Olson. I'm the ER.

11 THE COURT: All right. Thank you for being here.

12 UNIDENTIFIED: You're very welcome.

13 THE COURT: Try not to be too long.

14 So the 2016 version is the most current version.

15 MR. NOTESTINE: I couldn't remember what year, but I
16 knew it was after 2014.

17 THE COURT: But there aren't any changes from
18 what -- we just talked to the librarian, Elizabeth.

19 MR. NOTESTINE: Yeah, so on the (indiscernible)
20 defense, has Defendant proved that it exercised reasonable
21 care to promptly correct any harassment of Plaintiff because
22 of his age. That's --

23 THE COURT: Yeah, but that's not the same standard
24 as what we're doing here.

25 MR. NOTESTINE: Well that's --

1 THE COURT: For the good faith -- I mean --

2 MR. NOTESTINE: Yeah, well that's something where
3 the Defendant has a burden of proof. It's a different issue.
4 It's not --

5 THE COURT: Right.

6 MR. NOTESTINE: But that's just how it's termed. We
7 basically have the same language, it's just we have -- well, I
8 shouldn't be arguing this with you without (indiscernible).

9 THE COURT: Yeah, well we'll get everybody in here
10 and get going.

11 MR. SLOBIN: Hello, Your Honor. I'm sorry.

12 THE COURT: That's okay.

13 MR. SLOBIN: Something looks different in here.

14 THE COURT: So we were -- sorry?

15 We were talking about whether there is a newer
16 version of the pattern jury charge. I don't believe -- we
17 just called the librarian and we were told that the 2016 --
18 that it is the same as the 2014 charge updated through 2016,
19 is what I believe Elizabeth just communicated with the
20 librarian.

21 MR. NOTESTINE: Okay.

22 THE COURT: Does that sound --

23 MR. SLOBIN: Yeah, I just -- I mean, I just was
24 looking it up during the break. So that's what I was kind of
25 working off of.

1 MR. NOTESTINE: But we have hardly any --

2 THE COURT: 2014.

3 MR. SLOBIN: I need to look at the date on them.

4 THE COURT: Yeah, I don't --

5 MR. SLOBIN: Whatever is on the Fifth Circuit list.

6 THE COURT: Right. I believe that is --

7 MR. NOTESTINE: Well also, they've updated the 2014
8 on the website through 2016.

9 THE COURT: Correct.

10 MR. SLOBIN: I see what you're saying.

11 THE COURT: Correct.

12 MR. NOTESTINE: I got it.

13 THE COURT: We are bringing down copies of the
14 charges we have at this point in time.

15 MR. SLOBIN: Okay.

16 THE COURT: But we can go ahead and start talking, I
17 guess, before Elizabeth brings us the copies of the charge.

18 MR. NOTESTINE: We hardly have any dispute, Your
19 Honor. I mean --

20 THE COURT: You guys are okay without water at this
21 point, right?

22 MR. NOTESTINE: Yeah, I'm fine.

23 THE COURT: Okay. Are you okay?

24 UNIDENTIFIED: Yeah.

25 THE COURT: Yeah, we're fine.

1 So here's one issue that I wanted to bring up.
2 We're getting an advisory opinion from the jury on the good
3 faith question. I'm assuming that by the close of the case
4 tomorrow, all parties will have submitted whatever evidence
5 they want to have considered on the good faith defense.

6 MR. SLOBIN: Yes.

7 MR. NOTESTINE: I think that's right, Your Honor.

8 THE COURT: All right. Because if we're going to
9 get the advisory opinion, I want that opinion to be based on
10 all of the evidence that's going to be -- meaning, I don't
11 want to consider any other evidence or hold any other portion
12 of the trial beyond what the jury has.

13 MR. NOTESTINE: It was really Mr. Goenka's testimony
14 that -- he's the only one that is going to --

15 MR. SLOBIN: Before we started the trial, we were
16 talking about, like, that little mini part -- we're going to
17 have all of our stuff out, I think you're going to have all of
18 your stuff out, and therefore we'll be done when everyone's
19 done.

20 MR. NOTESTINE: Yeah. And I think that there's
21 anything else. Mr. Cherukupally may have --

22 THE COURT: Well I'm not telling you what to put on
23 in your case. I'm just telling you, I'm not going to take any
24 other -- since we're getting an advisory opinion from the
25 jury, I'm not going to take any additional evidence after we

1 submit that to the jury.

2 MR. NOTESTINE: And we don't have any other
3 evidence.

4 THE COURT: All right. Okay. So that was one
5 issue.

6 The other issue that I had was the proposed charge,
7 and I guess it's a lot easier to talk about this once we get
8 copies in everybody's hands. But there's a burden of proof
9 instruction and there's an FLSA instruction. I think it's on
10 page -- of the proposed charge that you all included in the
11 final pretrial order. It's instruction number 12, the Fair
12 Labor Standards Act, and that includes the issue that we
13 discussed today with respect to whether we're going to say if
14 the Defendant has satisfied you by a preponderance of the
15 evidence that the Plaintiff's primary duties were exempt
16 administrative duties, then your verdict should be for the
17 Defendant.

18 MR. NOTESTINE: And that's similar to the
19 affirmative defense on the (indiscernible) defense in the
20 discrimination cases.

21 THE COURT: So I believe that that is the way that
22 we should submit it because it is part of the --

23 MR. SLOBIN: Your Honor, my preference is that we
24 offer both of them. I think it's the same conclusion, but I
25 think it's very clear for the jury as to what they're asked to

1 do. And if you read them both in conjunction, you can really
2 not answer one one way and one the other, you're going to
3 answer them the same.

4 THE COURT: So in the pattern jury charge, what does
5 the Fair Labor Standards Act instruction include? Does it
6 just stop prior to that? So just stop at the paragraph --

7 MR. NOTESTINE: Yeah. There's nothing -- I mean, it
8 -- yeah, it stops at -- is this a pattern jury charge? In
9 example 12, is that from the pattern jury charge?

10 Yeah, I don't --

11 THE CLERK: What page is it on?

12 THE COURT: The question is, the instruction on the
13 Fair Labor Standards Act, is that contained in the pattern
14 jury charge? Or is this just created from the statute?

15 THE CLERK: No, this is just the law from the
16 statute.

17 MR. NOTESTINE: Yeah, I don't think there is a
18 pattern instruction.

19 THE COURT: Okay. There is no pattern
20 instruction --

21 MR. NOTESTINE: I don't think there is, Your Honor.

22 THE CLERK: No.

23 THE COURT: All right.

24 MR. NOTESTINE: So I mean, we've agreed to the first
25 part. It's just that --

1 THE COURT: So you're agreed -- the parties are
2 agreed upon everything. So let's look at -- do you all have a
3 copy of what the Court has given you, correct?

4 MR. NOTESTINE: Yeah.

5 THE COURT: So we're on page 9 of the current draft,
6 specific instructions, we have Fair Labor Standards Act. The
7 parties are in agreement with everything on that page up to
8 what is currently the last paragraph that begins, "If the
9 Defendant has proved by a preponderance of the evidence that
10 the Plaintiff's primary duties were exempt administrative
11 duties, then your verdict should be for the Defendant."

12 And the Plaintiff is now suggesting, or has been
13 suggesting, that we should also include the paragraph that
14 says, "If the Defendant has not satisfied you by a
15 preponderance of the evidence, that the Plaintiff's primary
16 duties were exempt administrative duties, then your verdict
17 should be for the Plaintiffs."

18 MR. SLOBIN: Yeah, Your Honor. For clarity's sake,
19 I think the words are exactly the same, it's just for clarity
20 and for just making it very easy for the jury not to be
21 confused as to why they were given the last couple of days.

22 THE COURT: Mr. Notestine, do you have any objection
23 to including --

24 MR. NOTESTINE: Yeah, I object. I think it's
25 redundant and unnecessary. Just looking at the pattern jury

1 charge on employment claims and seeing if they include both.
2 I'm pretty sure they don't, Your Honor.

3 I'm just looking at the employment charge for
4 hostile work environment.

5 MR. SLOBIN: Your Honor, I don't see the potential
6 for harm in adding both. I can see that, you know,
7 potentially there could be confusion by just having the one.

8 (Pause in the proceedings.)

9 THE COURT: Can you cite me authority for submitting
10 it both ways? Like other pattern charges that --

11 MR. SLOBIN: I'm sure if I had some time, Your
12 Honor, I could probably find something. Not off the top of my
13 head.

14 THE CLERK: The charge for Title 7 is on 129.

15 MR. SLOBIN: What was that?

16 THE CLERK: I said the charge for Title 7 is on 129.

17 MR. NOTESTINE: I was looking at the
18 (indiscernible).

19 THE CLERK: Okay.

20 THE COURT: How did they submit it in the pattern
21 charge for a Title 7 claim?

22 THE CLERK: It says: Plaintiff claims that he or
23 she would not have been specified adverse employment action
24 but for protective trade, or Defendant's average employment
25 action of Plaintiff was motivated by Plaintiff's name -- by

1 Plaintiff protecting trade." So it's either/or.

2 THE COURT: Can you bring that?

3 THE CLERK: Yeah.

4 MR. NOTESTINE: Yeah, it says if you find Plaintiff
5 was sexually harassed because of her sex, then you must find
6 for Plaintiff unless Defendant proves by a preponderance of
7 the evidence that -- and then it goes into the (indiscernible)
8 defense. That's about as close as I see --

9 THE COURT: Where is that?

10 MR. NOTESTINE: That's on 133. What if it has it --

11 THE COURT: I don't think it's error to submit both
12 of them.

13 Well that's not submitting -- oh, will they submit
14 it that way?

15 THE CLERK: No, I think it's --

16 THE COURT: Either or.

17 THE CLERK: Yeah. They're different. I think it's
18 depending on what type of case it is.

19 THE COURT: I'd rather -- is there a burden of proof
20 because this is more closely tied to the burden of proof issue
21 than anything else? You know, the burden shifting issue.

22 Do we have any -- is there any guidance from --

23 MR. SLOBIN: Should we maybe looking at an FMLA
24 questions? That's going to be -- because they're consistent
25 with --

1 MR. NOTESTINE: I don't think there's much on the
2 FMLA is the problem.

3 MR. SLOBIN: Your Honor, again, I just think that
4 there's -- you're not going to get any confusion by having
5 both of them there. They're basically worded the same. It's
6 just giving it a very clear directive to the jury.

7 MR. NOTESTINE: Your Honor, I don't know really that
8 we have something directly telling us what to do here.

9 (Pause in the proceedings.)

10 THE COURT: All right.

11 So Defendants object to having it submitted with
12 both of these paragraphs.

13 MR. NOTESTINE: Yes, we object Your Honor.

14 THE COURT: All right.

15 Are there any other differences among the parties
16 with respect to the charge?

17 MR. SLOBIN: I have some other potential additions,
18 Your Honor. Maybe if I can just hold this over herer?

19 THE COURT: Well --

20 MR. NOTESTINE: I mean, you put in our proposal on a
21 good faith defense for the Defendants -- the advisory issue.
22 That's ours. We obviously don't object to that, Your Honor.

23 THE COURT: So there's a question on a good faith
24 defense.

25 MR. SLOBIN: Your Honor, there's two things I'd like

1 to potentially add to number 12. That's (indiscernible) the
2 best fit. Can I go over them with you?

3 THE COURT: Hold on just a second. Two things you
4 want to add to instruction number 12?

5 MR. SLOBIN: Correct, Your Honor.

6 THE COURT: All right. Let's hear those.

7 MR. SLOBIN: One, it's --

8 THE COURT: Let's talk with respect to the copy that
9 we are working with -- the charge that we are working with.

10 MR. SLOBIN: I'm sorry.

11 THE COURT: That would be on page 9. Starting on
12 page 9, that's the Fair Labor Standards Act instruction is
13 what you're referring to when you say instruction 12, correct?

14 MR. SLOBIN: That's correct, Your Honor.

15 And I would propose possibly inserting it on page 10
16 above the issue that we were just dealing with. It's from a
17 Supreme Court case, Your Honor. The words are, "Employers may
18 not, either prospectively or retrospectively," -- I'm sorry.
19 "Employees may not, either prospectively or retrospectively,
20 waive their FLSA rights, to minimum wages, overtime, or
21 liquidated damages." And the case is
22 D.A. Shulte, Incorporated vs. Gangi, G-A-N-G-I, 328 U.S. 108
23 on page 114 (1946).

24 MR. NOTESTINE: But that's talking about --

25 THE COURT: Is that a jury charge?

1 MR. NOTESTINE: No.

2 MR. SLOBIN: It's not, Your Honor. But they've made
3 a lot of argument that by accepting their offer letter that
4 has a salary, that therefore, they can waive it essentially
5 and not be entitled to overtime. That's what I heard.

6 THE COURT: I haven't heard any evidence of a
7 waiver.

8 MR. NOTESTINE: I haven't heard (indiscernible).

9 MR. SLOBIN: What I would say it's argument from
10 Mr. MacDowall when he was asking those questions of the
11 trainers for sure, Your Honor, saying, that's an offer and
12 acceptance, but --

13 THE COURT: Okay. You can submit your requested
14 instruction and the authority for it, but I'm not inclined to
15 add that.

16 MR. SLOBIN: Okay. I will offer it and submit it.
17 I'll write it up between them --

18 THE COURT: Okay.

19 MR. SLOBIN: -- for the fourth quarter.

20 THE COURT: Okay.

21 MR. SLOBIN: Okay.

22 THE COURT: Probably what you should do is file it
23 as an amended proposed charge. Just include it. You know,
24 attach it, say you really want it included, and file it as an
25 amended proposed jury charge.

1 MR. SLOBIN: Okay.

2 And Your Honor, one other -- I don't know how you're
3 going to rule on this, but I'd like to put it out there.

4 THE COURT: Sure.

5 MR. SLOBIN: Same spot, essentially. Also a
6 Plaintiff's past employment experiences and method of being
7 compensated cannot be used to justify the Defendant's method
8 of compensating Plaintiffs during their employment of
9 Defendant.

10 There seem to be -- I have no authority for that,
11 Your Honor. I'm trying to get a case sent to me from the
12 office. It seemed like they tried to make an argument for
13 sure that because you are compensated one way at your former
14 employer that that also means that you can be compensated at
15 your current employer or at Shipcom.

16 Your Honor, it's such a -- to me, a bizarre legal
17 theory that that's just not how it works. But I don't wan
18 there to be any confusion by the jury to think that, well if
19 they worked somewhere else and they were paid the salary that
20 that means that when they go to Shipcom, it's okay to be paid
21 on that.

22 MR. NOTESTINE: Your Honor, I think we addressed it.
23 It's evidence. I mean, whether the jury believes it or not, I
24 don't think the construction -- I mean, they put on evidence
25 from Mr. Islam that those duties at those other jobs were

1 different. So the jury can make a decision about whether it's
2 relevant or not, and I don't think we need an instruction on
3 it.

4 It's not a waiver. We'd have to go into all of the
5 elements of a waiver, Your Honor. I think that would kind of
6 complicate it.

7 THE COURT: Well what I -- the instruction I'm going
8 to give them is the instruction that you all agree to in the
9 proposed charge. You, again, include your additional request.
10 You know, file it so that you protect your record. But the
11 FLSA describes how the exemption is to be decided, and
12 that's -- you know, that's how we're going to submit it to the
13 jury -- whichever three elements that are in the statute.

14 And we also have instructions in here which come
15 from the regulations regarding directly related to, discretion
16 and independent judgment, and I think we have primary duty in
17 here, correct?

18 MR. SLOBIN: Yes, Your Honor.

19 THE COURT: So those are the -- that's the guidance
20 we have from the statute itself and the regulations that
21 interpret the statute, so that's what we're going to stick
22 with for the charge. There's certainly nothing stopping you
23 from arguing the facts and that that evidence, you know, is
24 not part of what is considered in the instructions.

25 I don't think -- yeah. Unless you show me a case

1 where it was an error to fail to submit that instruction to
2 the jury, I don't think we're going to add it.

3 MR. SLOBIN: Yeah, I don't think we're going to find
4 one.

5 MR. NOTESTINE: (Indiscernible).

6 THE COURT: Anything else that you want in the
7 charge that is not in the --

8 MR. SLOBIN: Yes, Your Honor.

9 On page 11, the paragraph at the top that starts
10 with "An employee."

11 THE COURT: Yes.

12 MR. SLOBIN: So this is from the 29 CFR, but it's
13 missing a couple of words and I'd like to insert those words.

14 THE COURT: Okay.

15 MR. SLOBIN: Specifically, if you'll pick it up at
16 "thus, for example, employees acting as advisors or
17 consultants to their employers, clients, or customers."
18 Here's what missing, "(as tax experts or financial
19 consultants, for example)," and that's exactly from 29 CFR
20 Section 541.201(c). And I'd like to have that included
21 because that's what the CFR says.

22 THE COURT: As tax experts or financial
23 consultants --

24 MR. SLOBIN: Comma, for example.

25 MR. NOTESTINE: Which those aren't really relevant

1 to the case, Your Honor, and it's probably why we left it out.

2 MR. SLOBIN: Your Honor, there's plenty of examples
3 throughout the charge of things that aren't exactly relevant
4 to the case.

5 THE COURT: I agree. And we're using the
6 regulations and the statute as guidance for the jury on how to
7 decide whether the exemption or whether the duties fall within
8 the administrative exemption, so I will agree to include the
9 language directly from the CFR.

10 MR. SLOBIN: Thank you, Your Honor.

11 In the next section, under "discretion and
12 independent judgment," there's, I believe, a sentence missing.
13 Give me one second to pull it up.

14 One moment, Your Honor.

15 (Pause in the proceedings.)

16 Yes, Your Honor. Here's directly from the CFR in
17 the comments. I'm sorry.

18 MR. SINKULE: Look, it's not from the comments.

19 MR. SLOBIN: No. Okay. You're right. It's right
20 in the CFR. Your Honor, there's a sentence missing that
21 should go right before, "In general." The sentence is --

22 MR. NOTESTINE: Is this from 541.202?

23 MR. SLOBIN: Correct.

24 MR. SINKULE: Yes.

25 THE COURT: Elizabeth, do you have that pulled up?

1 THE CLERK: I'm not connected to the internet right
2 now.

3 MR. SLOBIN: I'm on Judge Milloy's internet. I hope
4 that's okay.

5 Do you want me to read the sentence, or are you
6 looking it up, Your Honor?

7 THE COURT: I'm trying to pull it myself. I'm going
8 to need for you to give me the cite once I get connected to
9 the internet.

10 (Pause in the proceedings.)

11 MR. NOTESTINE: I've got it here, Your Honor.

12 MR. SLOBIN: I can just bring it to you, Your Honor,
13 if you want.

14 THE COURT: Okay. Sure.

15 To qualify for the administrative exemption.

16 MR. SLOBIN: Yeah, that's missing from the charge.

17 MR. NOTESTINE: What sentence is missing?

18 THE COURT: "To qualify for the administrative
19 exemption, an employee's primary duty must include the
20 exercise of discretion and independent judgment with respect
21 to matters of significance."

22 MR. NOTESTINE: That's in the primary duty, though,
23 isn't it?

24 Yeah, that's the first -- to qualify for the --
25 which primarily must be --

1 THE COURT: Hold on.

2 MR. NOTESTINE: It's in the primary duty
3 instruction. Well it must be performance of exempt work. The
4 term primary duty means a principal one.

5 It's a similar statement. It's not exactly the
6 same. So I think we moved the primary duty to the primary
7 duty instruction.

8 THE COURT: So we do have under primary duty, to
9 qualify for the administrative exemption, an employee's
10 primary duty must be the performance of exempt work.

11 Let's be consistent. Let's go with the language
12 exactly as it appears in the CFR. So we'll insert the missing
13 sentence, and then when we get to the primary duty
14 definition -- you want to pull that up and make sure we have
15 that?

16 MR. SLOBIN: Yes.

17 MR. NOTESTINE: That's from a different CFR.

18 THE COURT: So Ms. Humphrey, do you see what we're
19 doing?

20 THE CLERK: I don't have internet, so you're going
21 to have to show me what you're doing.

22 MR. SLOBIN: Here, I'll bring it to you.

23 THE CLERK: Yeah.

24 THE COURT: And just go ahead and type it right into
25 the charge right now.

1 MR. SLOBIN: Thank you, Your Honor.

2 THE COURT: Yes.

3 Now is the instruction on primary duty as it comes
4 out of the CFR?

5 MR. SLOBIN: Your Honor, do you know what the CFR
6 number is for that?

7 THE COURT: 29 CFR 541.700.

8 MR. NOTESTINE: 541.700.

9 Your Honor, it starts out, directly -- here it is.
10 It starts out --- I haven't gone through the entire
11 regulation.

12 (Off the record.)

13 THE COURT: Okay.

14 We leave primary duty as is as far as I can tell.
15 Do you agree?

16 MR. SLOBIN: Yes, Your Honor.

17 THE COURT: The instruction that we have currently
18 for primary duty which begins on page 14 is going to remain as
19 is.

20 MR. SLOBIN: Yes, Your Honor. It looks the same to
21 me.

22 THE COURT: So the changes that we are making so far
23 is we are adding the missing sentence from 29 CFR 541.202 on
24 page 11 as the first sentence under discretion in independent
25 judgment, correct? Mr. Notestine, do you agree?

1 MR. NOTESTINE: Yeah. I have no problem with that,
2 Your Honor.

3 THE COURT: And, Mr. Slobin, that is correct?

4 MR. SLOBIN: Yes, Your Honor. That is correct, Your
5 Honor.

6 THE COURT: All right.

7 I've overruled the other two requested instructions
8 that Plaintiffs have made. Is there anything else?

9 MR. SINKULE: There was the addition of those few
10 words as well in the one section. The words in parenthesis,
11 the example.

12 THE COURT: Yes.

13 MR. SINKULE: I forget what section that was.

14 THE COURT: That was --

15 MR. NOTESTINE: I guess I object to that.

16 THE COURT: That's also on page 11, the last line of
17 the section.

18 MR. SLOBIN: Your Honor, I'm just reading over the
19 good faith.

20 THE COURT: Okay.

21 (Off the record.)

22 MR. SLOBIN: Hey, Kerry?

23 MR. NOTESTINE: Yes.

24 MR. SLOBIN: Did this good faith instruction come
25 from somewhere, or is it just --

1 MR. NOTESTINE: Mr. MacDowall can tell you, but I
2 believe the first sentence comes directly from the statute.
3 Then the reasonable belief to the second sentence came from
4 where?

5 MR. MacDowall: I believe that came from the Eighth
6 Circuit case that's cited in the footnote --

7 MR. NOTESTINE: *Tyson Foods. Guyton vs. Tyson*
8 *Foods.* I thought that's where the third sentence came from.

9 THE COURT: Which page is that instruction on?

10 MR. SLOBIN: 15.

11 MR. NOTESTINE: Third sentence came from that. I
12 think I looked at this, Your Honor, and I know the first
13 sentence comes directly out of the statute.

14 (Off the record)

15 MR. NOTESTINE: The Eighth Circuit case apparently
16 said, Judge, that they gave a limiting instruction that had to
17 include the third sentence. That's the *Tyson Foods* case.

18 THE COURT: And the third sentence being --

19 MR. NOTESTINE: A finding that Shipcom was acting in
20 good faith and reasonable act or omission was in violation may
21 only be used to decide issues presented by this defense.

22 THE COURT: Right.

23 MR. NOTESTINE: It's kind of what you said once to
24 the jury I think that -- I think you said it.

25 Good faith just -- I don't know if you ever said the

1 audit leads to good faith, but could only be considered for
2 that issue. Did you ever say that to the jury?

3 THE COURT: No. Because the issue -- because I
4 don't think there's a basis for a limiting instruction on the
5 evidence since I have held that Rule 407 doesn't exclude the
6 evidence. I think the limiting instruction would apply if it
7 were being admitted for a limited purpose as under Rule 407.

8 MR. SLOBIN: Your Honor, I have some thoughts on
9 things I'd like to add to that good faith instruction.

10 THE COURT: Okay.

11 MR. SLOBIN: And I haven't drafted that
12 specifically, but I'd like to put in some words that good
13 faith is not delays in reclassification because I think that's
14 the issue for the jury, really, as to how long it took the
15 company once they even looked at this issue. You know, it was
16 over a year, and I don't think --

17 THE COURT: I think that the case law is going to
18 say and this instruction says the act or omission giving rise
19 to such action. So that would be reclassification.

20 MR. SLOBIN: What about adding even such act or
21 omission including delays?

22 MR. NOTESTINE: Your Honor, I think that's
23 commenting on the evidence. I mean, unless he's got a very
24 specific cite for that, I --

25 THE COURT: Yeah. I mean, my understanding of the

1 law and my understanding of this instruction is that you're
2 looking at the act or omission that gave rise to the action
3 which would be initial reclassification. So --

4 MR. SLOBIN: Yeah, I know. But the argument that
5 they're making, if I understand it correctly, is we acted in
6 good faith and that's what all that testimony is. We hired
7 Nitin Sud (phonetic), and we did this, and we did this. These
8 are all the things that we did in good faith. Okay.

9 It's not arguing about what we initially did. All
10 of the testimony from the first witness was, look at all the
11 stuff that we did in good faith once we looked at this issue.

12 THE COURT: You know what? I don't think that
13 that's what the law is, and I don't think that that's what
14 this instruction says, either. Plaintiffs may recover
15 liquidated damages unless the employer shows to a satisfaction
16 of the Court that the act or omission giving rise to such
17 action. The act or omission giving rise to the action is the
18 initial classification. So that has to be in good faith and
19 it had reasonable grounds for believing that its act or
20 omission was not a violation of the FLSA.

21 I think that they can argue -- you know, both sides
22 can argue the evidence. Well I'm going to put this back on
23 you all. I believe that the law is that you look at the time
24 of the original classification. I'll charge you all with
25 finding tonight any case law that says otherwise.

1 MR. SLOBIN: I appreciate that, Your Honor. I'll
2 look tonight.

3 MR. NOTESTINE: First sentence is right out of the
4 statute, Your Honor, so there can't be a dispute about that.

5 THE COURT: Yeah, I mean --

6 MR. SLOBIN: I don't have any problem with the first
7 sentence. But let me -- I'll look. If I find something, I'll
8 let you know, and if not --

9 THE COURT: Okay.

10 MR. SLOBIN: -- it will be what it is.

11 THE COURT: The thing that I'm concerned we may not
12 properly have in this defense is the burden.

13 MR. SLOBIN: Yes, I agree with you.

14 MR. NOTESTINE: Unless the employer shows to the
15 satisfaction of the Court. That --

16 THE COURT: And I'm wondering if we should take --
17 because this is an advisory opinion for the jury -- whether we
18 should take out "to the satisfaction of the Court." Maybe
19 just take out the words "to the satisfaction of the Court."

20 MR. NOTESTINE: Yeah, that seems unlikely to be
21 appropriate to present to a jury, especially since we've got a
22 lawyer on the jury. Isn't that something that the Court
23 should decide?

24 THE COURT: Right.

25 I think we need a sentence regarding the burden just

1 like we have in what was formerly instruction 12.

2 MR. NOTESTINE: I'm fine with putting something
3 similar to what we added to 12 in there, Your Honor.

4 THE COURT: Something like the Defendant must prove
5 by a preponderance of the evidence --

6 MR. NOTESTINE: That it acted in good faith.

7 THE COURT: Or maybe it should say -- maybe what we
8 should do is say -- I think that if we combine it with the
9 fact that the defense only applies to liquidated damages,
10 that's the appropriate way to go. So we --

11 MR. NOTESTINE: That's kind of what this says. It
12 was not a violation and it won't be used to decide issues
13 presented by this defense as to liquidated damages. That's
14 what that --

15 THE CLERK: I think I might have changed that on the
16 last sentence, are entitled to liquidate. And the only reason
17 (indiscernible). I'm not sure if that's what you had in the
18 initial instruction.

19 MR. NOTESTINE: And then we have a finding that
20 should come up in good faith and then have reasonable grounds
21 for believing its act or omission is not a violation may only
22 be used to decide issues presented by this defense.

23 THE CLERK: Yeah.

24 MR. NOTESTINE: You've changed it.

25 THE CLERK: I changed that to, may only be used to

1 determine whether Plaintiffs are entitled to mitigated
2 damages.

3 THE COURT: So what I would like to do, and I would
4 like for the parties to agree on the language. I think that
5 this instruction needs to specify that the good faith defense
6 is an affirmative defense to an award of liquidated damages
7 and that the Defendant has the burden of demonstrating that it
8 acted in good faith.

9 So let's look at that last paragraph. A finding
10 that Shipcom Wireless acted in good faith and that it had
11 reasonable -- and I guess we could just insert a sentence in
12 front of that last sentence on the page that says --

13 THE CLERK: What if you just, instead of "to the
14 satisfaction of the Court," took that out and said, "the
15 employer shows by a preponderance of the evidence that"?

16 MR. NOTESTINE: Yeah, that sounds pretty good,
17 actually.

18 MR. SLOBIN: I like what the Judge said previously.

19 THE COURT: You like the second sentence?

20 MR. SLOBIN: No, I liked good faith is an
21 affirmative defense and Defendant has the burden of
22 demonstrating that.

23 THE COURT: Ultimately, this is an advisory issue.
24 I do want to get it right as much as possible.

25 MR. SLOBIN: Your Honor, I've never done an advisory

1 like this. Do we let them know it's an advisory, or? No?

2 MR. NOTESTINE: No.

3 THE COURT: No.

4 MR. SLOBIN: Okay.

5 THE COURT: Not that I know of.

6 MR. NOTESTINE: You know, frankly, in the Title 7
7 case, that case really had an advisory. That's really -- in
8 fact, I think that's really something the Court's supposed to
9 decide because it's definitely (indiscernible). It's just not
10 always done by a jury. They never say anything about it being
11 advisory.

12 MR. SLOBIN: Yeah.

13 MR. NOTESTINE: I think the Court -- unless the
14 Plaintiff shows by a preponderance of the evidence that the
15 act or omission (indiscernible), I mean, I think the clerk's
16 idea is -- takes out the satisfaction of the Court and shows
17 by a preponderance of the evidence that the act or omission.

18 (Pause in the proceedings.)

19 THE COURT: Yeah. I would rather see how it's been
20 submitted as an advisory --

21 MR. NOTESTINE: I don't know that we've got a copy
22 of the case, but they actually gave an advisory opinion in
23 this *Guyton vs. Tyson Foods* case holding that the jury
24 instruction of good faith was not error when the limiting
25 instruction that it could only be used to decide the issue

1 presented by the good faith defense was had. That's at the
2 bottom of our --

3 I don't think we have the copies of those cases,
4 Your Honor, where I can show it.

5 THE COURT: I had a bunch of them. It was the
6 *Guyton vs.* --

7 MR. NOTESTINE: Yeah, there's three cases where they
8 apparently gave advisory --

9 THE COURT: Oh, here we go. I have the *Guyton* case
10 right here. At least some parts of it. Yeah, for some
11 reason, I don't have -- I must have left other pages --

12 MR. NOTESTINE: In state court, it's pretty common
13 to give a good faith when you do punitive damages. That's
14 sort of a standard part of the pattern jury charge in state
15 court. And I think that's why clear and convincing standard,
16 all that kind of stuff, you know. It's not a Title 7 claim.

17 THE COURT: I don't see if this was -- I don't have
18 the full case here in front of me, but I don't see that they
19 submitted this to the --

20 MR. NOTESTINE: It's referring to page 762. Do you
21 have page 762?

22 MR. SLOBIN: Your Honor, what's the cite?

23 THE COURT: Yes, I do have page 762.

24 MR. NOTESTINE: 767 F.3d 754, citing to page 762.

25 THE CLERK: (Indiscernible).

1 (Pause in the proceedings.)

2 THE COURT: It just says the jury found that Tyson
3 acted in good faith under 29 U.S.C. 259(a). Plaintiffs
4 believe the trial court should have decided the good faith
5 question as a matter of law. Jury's other findings render any
6 error harmless. According to Plaintiffs, allowing the jury to
7 hear evidence on Tyson's good faith defense prejudiced their
8 other claims. The jury was instructed on *Reich* and *Alvarez* as
9 part of the good faith claim, but were told this could only be
10 used by you to decide the issues presented by the good faith
11 defense.

12 MR. NOTESTINE: Yeah, that's where this last
13 sentence comes from.

14 THE COURT: A jury is presumed to follow its
15 instructions.

16 So what are the instructions on *Reich* and *Alvarez*?

17 MR. NOTESTINE: It has the questions to the jury.

18 THE COURT: Yeah, I don't have that page.

19 MR. NOTESTINE: Did the Plaintiffs -- but it's the
20 questions. Did the Plaintiffs prove their FLSA and Iowa
21 claims on a class-wide basis were pre-shift and post-shift
22 donning and doffing in this case because it was work within
23 the meaning of the FLSA, it is integral and indispensable to a
24 principal activity, such that it starts and ends, and the
25 answer to both questions is no, then do not answer any more

1 questions and sign the verdict form.

2 THE COURT: So on page 760, they talk about the
3 *Reich* case and the *Alvarez* case, and those are cases regarding
4 walking time to and from the production floor after donning
5 special safety gear.

6 MR. NOTESTINE: Integral and indispensable principal
7 activities.

8 THE COURT: All right. I don't think that this case
9 is really going to help us.

10 MR. NOTESTINE: Going to help us.

11 THE COURT: No.

12 So let's go back to our statute, look at the
13 language of the statute on liquidated damages and good faith,
14 and I want to see --

15 THE CLERK: What about (indiscernible)?

16 MR. NOTESTINE: 206, I believe, or was it 260.

17 MR. SLOBIN: Is it 260 (indiscernible)?

18 MR. NOTESTINE: Yeah, maybe it was 260.

19 29 U.S.C. --

20 MR. SINKULE: Well it starts at 200 or 201.

21 MR. NOTESTINE: Liquidated damages right at the end.
22 Yeah, liquidated damages.

23 THE CLERK: That's 260.

24 What did you want to know, Judge?

25 THE COURT: I want to know exactly what's in the

1 statute regarding the --

2 MR. NOTESTINE: Here's the liquidated damages
3 section. It's 29 U.S.C. 260. As I said, it's our first
4 sentence, Your Honor.

5 (Pause in the proceedings.)

6 THE COURT: All right. This is what I tend to think
7 we should do, but I'm willing to listen to argument.

8 Keep the first sentence as it is. The FLSA provides
9 that Plaintiffs may recover liquidated damages unless the
10 employer shows that the act or omission giving rise to such
11 action was in good faith and that, let's say that Defendant
12 had reasonable grounds for believing that its act or omission
13 was not a violation of the FLSA.

14 Then, I think we should say, a finding that Shipcom
15 Wireless, Inc. -- we should take the sentence that is right
16 now a separate paragraph and move it up so it would say a
17 finding that Shipcom acted in good faith and that it had
18 reasonable grounds -- blah, blah, blah -- may only be used to
19 determine whether Plaintiffs are entitled to liquidated
20 damages.

21 Then I think we should insert the sentence that
22 says, Shipcom Wireless bears the burden of proving good faith
23 by a preponderance of the evidence. And a reasonable belief
24 may be found where the employer engaged in the acts proven to
25 be violations of the FLSA but did so under mistake although

1 reasonable belief.

2 MR. NOTESTINE: I think I'm okay with that, Your
3 Honor.

4 MR. SLOBIN: I am, too, Your Honor.

5 MR. NOTESTINE: Yeah.

6 THE COURT: Okay. Now if I can just repeat it.

7 THE CLERK: Do you want me to read back to you what
8 I have?

9 THE COURT: Did you type all that as I was talking?

10 THE CLERK: (No audible response.)

11 THE COURT: Yes. Great.

12 THE CLERK: FLSA provides that Plaintiffs may
13 recover liquidated damages unless the employer shows that the
14 act or omission giving rise to such action was in good faith
15 and that Defendant had reasonable grounds for believing that
16 its acts or omission was not a violation of the FLSA.

17 A finding that Shipcom Wireless, Inc., acted in good
18 faith and that it had reasonable grounds for believing that
19 its act or omission was not a violation of the FLSA may only
20 be used to determine whether Plaintiffs are entitled to
21 liquidated damages.

22 Shipcom Wireless bears the burden of proving good
23 faith by a preponderance of the evidence. A reasonable belief
24 may be found where the employer engaged in the acts proven to
25 be violations of the FLSA but did so under mistake although

1 reasonable belief -- under a mistake and although reasonable
2 belief that its acts were in conformity with the law.

3 THE COURT: Yeah. The only thing I would say is
4 maybe we should say good faith defense because --

5 THE CLERK: Good faith defense by a preponderance?

6 THE COURT: Yeah. Well, the only thing I'm
7 concerned about is the first sentence talks about good faith
8 and reasonable grounds and then the last sentence talks about
9 a reasonable belief. Maybe we just sort of -- maybe in the
10 first sentence, where we say FLSA provides that Plaintiffs may
11 recover liquidated damages, blah, blah, blah, blah, blah.
12 Instead of period, we say coma, this is called the good faith
13 defense or something like that. Or this is known as the good
14 faith defense. We're just defining it.

15 MR. SLOBIN: Yeah, I'm happy with that.

16 THE COURT: Are you okay with that, Mr. Notestine?

17 MR. NOTESTINE: Yeah.

18 THE COURT: So the first sentence that Ms. Humphrey
19 just read after the word FLSA, we will say, this is known as
20 the good faith defense.

21 MR. NOTESTINE: So you'd say the FLSA provides that
22 the Plaintiff may recover liquidated damages unless the
23 employer shows the section supported the act. It says, "shows
24 that the act omission gave rise to the good faith and had
25 reasonable grounds for believing that its (indiscernible)

1 violation." This is the good faith defense. Is that what
2 you're saying?

3 THE COURT: Yes.

4 MR. NOTESTINE: Yeah, I'm okay with that.

5 THE COURT: Okay. Then I think we're set.

6 THE CLERK: Take out known as, this is the good
7 faith.

8 MR. NOTESTINE: I don't think you're taking out
9 anything, just adding --

10 THE COURT: No, this is known as the good faith
11 defense, yeah.

12 And then I guess we could make the remainder a
13 second paragraph just so that the jury understands we're
14 expanding on the good faith defense. Okay.

15 MR. NOTESTINE: Whoops.

16 THE COURT: Here you go.

17 MR. NOTESTINE: My law firm would be upset that I
18 gave my phone to a Judge.

19 THE COURT: Oh, I didn't look at it.

20 MR. NOTESTINE: All the different wild emails we
21 get.

22 THE COURT: All right. Anything else?

23 MR. SLOBIN: Can we get a print out of that?

24 THE COURT: Yes.

25 And look over it closely, and if there are any --

1 MR. NOTESTINE: We'll just have a short formal
2 charge conference first thing in the morning, and then just
3 make our objections and submit it.

4 I'm going to object, obviously, to the defense
5 because of the -- I have to figure out exactly how I'm going
6 to object to it.

7 THE COURT: Yeah, I don't know how you're going to
8 object to that because --

9 MR. SLOBIN: I think you objected to one of your own
10 questions today.

11 MR. NOTESTINE: Did I sustain myself?

12 MR. SLOBIN: You were asking (indiscernible) a
13 question, and he responded, and you objected to his response,
14 and I was like --

15 THE COURT: I noticed that too.

16 MR. NOTESTINE: I meant to object to his response,
17 I'm sure.

18 THE COURT: So unless there's a major error --
19 unless it's something other than just making your formal
20 objections that you've already given me, we'll do the formal
21 charge conference --

22 MR. NOTESTINE: My objection should take two
23 minutes.

24 THE COURT: Okay.

25 All right. So I think we can probably just do it

1 first thing in the morning before we bring the jury in the
2 box.

3 MR. NOTESTINE: And we're keeping the questions the
4 same, right?

5 THE COURT: Yes.

6 Yeah. The questions look good to me.

7 MR. NOTESTINE: Very good.

8 MR. SLOBIN: Kerry?

9 MR. NOTESTINE: Yes.

10 MR. SLOBIN: Is your witness, do you know, and you
11 don't have to answer me, but are you expecting a long time for
12 the witness, or a short time? I'm just trying to figure out
13 timing for --

14 MR. NOTESTINE: I think we have some -- I mean,
15 obviously, we have some things to address. I mean, he's not
16 going to be half an hour or anything like that.

17 THE COURT: So we have one Plaintiff and one defense
18 witness, perhaps two.

19 MR. NOTESTINE: And I don't think we're going to go
20 over. It's very unlikely. We talked about it at lunchtime,
21 and kind of decided --

22 THE COURT: I don't think we'll have any
23 difficulty -- assuming we don't have any difficulty closing
24 the evidence before lunch. Obviously, the sooner we get the
25 case to the jury, the better.

1 MR. NOTESTINE: And you said the jury questions are
2 (indiscernible).

3 THE CLERK: (Indiscernible) jury questions
4 (indiscernible).

5 THE COURT: I think we at least should be able to --
6 I mean, I guess, worst case scenario, if we get the evidence
7 closed before lunch but not sufficiently before lunch to have
8 both sides give their closing arguments, how do you want to
9 address that?

10 MR. SLOBIN: My honest preference is that we eat
11 honestly before -- if we're going to --

12 THE COURT: Just break early, eat --

13 MR. SLOBIN: Just break early, eat --

14 MR. NOTESTINE: Come back --

15 MR. SLOBIN: -- do the closing. But we'll just play
16 it by ear.

17 MR. NOTESTINE: (Indiscernible).

18 We shouldn't spend time on something that may not be
19 an issue.

20 MR. SLOBIN: Yeah, if we're cranking tomorrow
21 morning, I think we'll be fine.

22 THE COURT: All right.

23 MR. NOTESTINE: Okay. Thank you, Your Honor.

24 THE COURT: We'll see you all in the morning. Thank
25 you.

1 MR. SLOBIN: Thank Your Honor.

2 THE COURT: Thank you.

3 (Discussion off the record.)

4 THE COURT: Oh, Counsel, we did not address the
5 exhibits. So we have, quote/unquote, "pre-admitted all
6 exhibits." I don't think you have referred to all of them.
7 Are you still going to want to send everything back to the
8 jury, everything that was admitted? Do you want to send it
9 back to the jury?

10 MR. NOTESTINE: Well, we're going to take out the
11 ones that relate to the damages.

12 MR. SINKULE: Yeah, We've taken those out.

13 THE COURT: Right -- which we already have on
14 Record. But yeah, you're going to -- is that the only thing
15 you're going to pull and not send back with the jury?

16 MR. NOTESTINE: I think we pretty much referred to
17 everything else.

18 MR. SLOBIN: I've not been keeping (indiscernible).

19 MR. NOTESTINE: Well, I mean, once Mr. Abraham
20 testifies, I think we're --

21 THE COURT: Okay. Well I just want to make sure
22 because at some point, Ms. Jantowski is going to get you all
23 to sign a document stating that all of these exhibits have
24 been admitted and are going back with the jury.

25 MR. SLOBIN: We'll look tonight and let you know

1 first thing in the morning.

2 THE COURT: Great. Thank you, very much, gentlemen.

3 MR. NOTESTINE: Thank you.

4 MR. SLOBIN: Thank you.

5 MR. NOTESTINE: We'll want to take -- we're going to
6 bring another notebook and take out -- we're going to take the
7 statements back and then we'll take out the damages ones that
8 are on that list, put them in a separate notebook just for --

9 THE COURT: And you did already pull out 7 and 24?

10 MR. NOTESTINE: We already -- I just pulled that
11 out.

12 THE COURT: All right.

13 See you all in the morning. Thank you, very much.

14 (Proceedings adjourned at 5:35 p.m.)

15 * * * * *

16 *I certify that the foregoing is a correct transcript*
17 *to the best of my ability produced from the electronic sound*
18 *recording of the proceedings in the above-entitled matter, and*
19 *this is an accurate a transcript, as best as is possible, due*
20 *to conditions of the recording.*

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